



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/22/0447

Re: Property at 16/7 Viewforth, Edinburgh, EH10 4JG (“the Property”)

Parties:

Miss Bylgja Gudnyjardottir, 33/2 Lorne Street, Edinburgh, EH6 8QW (“the Applicant”)

Mr Balint Bolygo, 67 Approach Road, Margate, CT9 2AP (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent(s) for payment of the undernoted sum to the Applicant(s):

Sum of ONE THOUSAND TWO HUNDRED AND THIRTY-SEVEN POUNDS AND FIFTY PENCE (£1237.50) STERLING

- Background
- 1. An application was submitted to the Tribunal under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. Said application sought an order be made against the Respondent on the basis that the Respondent had failed to comply with his duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).

2. A Case Management Discussion took place on 6 May 2022 by tele-conference. Both parties were personally present and representing themselves. A separate application seeking a civil order under Rule 111 of the Rules was also heard at the same time, under case reference FTS/HPC/CV/22/0449.
3. The Applicant sought an order from the Tribunal on the basis that the Respondent had failed to comply with their duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the 2011 Regulations.
4. The Applicant submitted that they had entered into a Private Rented Tenancy with the Respondent which commenced 1 December 2018 and ended 8 January 2022. A copy of the tenancy agreement was lodged with the application. The Applicant paid a deposit of £412.50 to the Respondent and prior to the start of the tenancy, by way of bank transfer. The Applicant was not provided with any details of the deposit having been lodged in a tenancy deposit scheme. The Applicant contacted the Respondent at termination of tenancy to seek return of the deposit, and details of the scheme within which it had been lodged. The deposit was not returned to her and the Respondent advised that he had incurred costs in cleaning the property and rectifying damaged flooring (caused by a cat urinating in the boxroom). The Applicant contracted the three tenancy deposit schemes in Scotland and they all confirmed to her that they did not hold a deposit in her name.
5. The Respondent submitted that the Applicant had moved into a property which was shared with a "lead tenant" named Kirsty Irvine, who had resided there since 2015. The previous tenant's deposit had been lodged into a tenancy deposit scheme. The deposit scheme account had always held £750. The tenant who had departed and been replaced by the Applicant had their deposit paid out to them via the scheme. When Ms Irvine moved out, she claimed back £750. The Respondent had struggled to find records showing what Ms Irvine had paid when she moved in, as she had paid in cash. The Respondent agreed to £750 being repaid her but wrongly believed that there would still be balance sitting in the scheme account to cover the Applicant's deposit. The Respondent referred to having "topped up" the deposit account when the Applicant moved in. After being asked for clarification, the Respondent advised that he received a deposit of £412.50 from the Applicant but did not put the total sum into the scheme as he didn't believe that was required. Part of it was placed in the scheme, and a figure of approximately £325 was referred to. The rest remained in the Respondent's personal bank account.
6. The CMD was adjourned and a Hearing fixed on a date to be hereafter assigned to determine:
 - (i) Did the Respondent fail to comply with his duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011?
 - (ii) If the Respondent did fail to so comply, the level of Order to be granted in terms of Regulation 10 of the said 2011 Regulations.

- The Hearing
7. A Hearing took place on 15 July 2022 2022 by tele-conference. Both parties were personally present and representing themselves. A separate application seeking a civil order under Rule 111 of the Rules was also heard at the same time, under case reference FTS/HPC/CV/22/0449.
 8. The Applicant sought an order from the Tribunal on the basis that the Respondent had failed to comply with their duties to lodge a deposit in a tenancy deposit scheme within 30 working days of the start of the tenancy in terms of Regulation 3 of the 2011 Regulations.
 9. The Applicant submitted that she had entered into a tenancy with the Respondent which commenced 1 December 2018 and ended 8 January 2022. A copy of the tenancy agreement was lodged with the application. The Applicant paid a £412.50 deposit to the Respondent to the start of the tenancy. She had originally moved into the property on a joint tenant basis, and shared with one other tenant. The existing tenant had paid her own deposit when she had moved in. The joint tenant moved out during the course of the Agreement and the Applicant then lived there alone until she moved out in January 2022. The Applicant had checked with all three tenancy deposit schemes who confirmed that they did not hold her deposit. There had been no inventory of the condition of the Property at the start of the Agreement, nor at the end. There had been no inspections. She was aware that the previous tenant had reclaimed her deposit back from the tenancy deposit scheme when she left, and that left no money in the scheme for this Property. She was aware that each tenant prior to her had received their deposits back, without any inspection of the Property being carried out. She wished to seek an award of three times the amount of the deposit in terms of Regulation 9 of the 2011 Regulations.
 10. The Respondent accepted that there had been mistakes made by him regarding the Applicant's deposit. He confirmed that he did receive £412.50 from the Applicant and that none of this was placed into a tenancy deposit scheme. Instead, it was placed into his own personal bank account. He submitted that it remained there. He accepted that he had not carried out an inventory of condition of the property at the start of the tenancy, nor at the end. He had not inspected the Property during the Applicant's period of occupation. He had not been in the Property since 2015/2016.
 11. The Respondent submitted that in 2017 he had lodged a deposit of £750 in the Safe Deposits Scotland scheme received from a previous tenant. He had viewed this deposit as belonging one half to one of the joint tenants at the time, and one half to the other. He was confused as to the workings of the tenancy deposit scheme when there was a joint and rolling tenancy such as his. When that tenant moved out in 2021 she claimed the full £750 back from the tenancy deposit scheme and he was surprised as he thought she was only entitled to one half. There had been a dispute raised with the tenancy deposit scheme and the tenant was repaid the full £750. This left no money in the scheme pertaining to this particular Property. The Respondent had believed that he did

not need to pay the Applicant's deposit into the scheme when he received it from her, and he thought there would be sufficient money in the scheme from the previous tenant's deposit to cover her share.

12. The Respondent confirmed that he had been letting out the Property since around 2005 or 2006. It was his only rental property. He submitted that he had never taken any legal advice on his obligations as a landlord, nor attended any training courses or information events provided by the local authority or other organisations. He relied on the internet as his source of information. He had been confused as to the operation of the scheme and had spoken to Safe Deposits Scotland on a number of occasions regarding how the scheme worked with his type of joint tenancy, with tenants coming and going. It was submitted that in 2018 there had been an incoming tenant ("Mr Rayner") who had paid a deposit and following advice from Safe Deposits Scotland, an account had been set up in Mr Rayner's name for this deposit. When asked by the tribunal, the respondent could not explain why the same thing was not done for the Applicant on this occasion.

- Findings in Fact

13. The Tribunal made the following findings in fact:

- (a) The parties entered into a private rented tenancy agreement ("the Agreement") which commenced 1 December 2018;
- (b) The Applicant paid a deposit of £412.50 to the Respondent;
- (c) The Respondent failed to lodge the deposit of £412.50 into an approved tenancy deposit scheme under Regulation 3 of the 2011 Regulations;
- (d) The Respondent failed to provide the statutory information to the Applicant under Regulation 42 of the Regulations;
- (e) The Tenancy ended on 8 January 2022;
- (f) The Deposit has not been returned to the Applicant.

- Findings in Law

14. The Tribunal made the following findings in law:

14.1 The Respondent was in breach of their duties under Regulation 3 of the 2011 Regulations, which states as follows:

3 (1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—

- (a) pay the deposit to the scheme administrator of an approved scheme; and*
 - (b) provide the tenant with the information required under regulation 42.*
- (2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.*
- (3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—*
 - (a) in respect of which the landlord is a relevant person; and*
 - (b) by virtue of which a house is occupied by an unconnected person, unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.*
- (4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.*

14.2 The Respondent was in breach of their duties under Regulation 42 of the 2011 Regulations, which states as follows:

- 42.—***(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).*
- (2) The information is—*
- (a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;*
 - (b) the date on which the tenancy deposit was paid to the scheme administrator;*
 - (c) the address of the property to which the tenancy deposit relates;*
 - (d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;*
 - (e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and*
 - (f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.*
- (3) The information in paragraph (2) must be provided—*

(a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or

(b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.

14.3 The Tribunal must grant an order in terms of Regulation 10 which states as follows:

10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(b) may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to—

(i) pay the tenancy deposit to an approved scheme; or

(ii) provide the tenant with the information required under regulation 42.

- Reasons for Decision

15. The Tribunal found the Applicant to be credible and reliable in her evidence. The Tribunal found the Respondent to be often vague in his evidence, and somewhat evasive in his answering of direct questions put to him by the Tribunal.

16. The Tribunal was satisfied that the Respondent was in breach of their duties under Regulations 3 and 42 as aforesaid. This was by the Respondent's own admission.

17. The 2011 Regulations were introduced to provide security for tenants in paying over deposits to landlords and to address an issue with some landlords taking tenancy deposits and then failing to pay them back where they were lawfully due at the end of the tenancy. The 2011 Regulations also provide that parties have access to an independent and impartial dispute resolution mechanism within a scheme to address any deposit deductions which require to be considered.

18. By the Respondent's failure to lodge the deposit into an approved tenancy deposit scheme the deposit was not protected for the entire duration of the Agreement, being a period of just over three years. The Tribunal considered

this to be a significant period of time for a deposit not to have been held securely.

19. The Tribunal noted that the Respondent had been leasing the Property since 2005 or 2006. Therefore he would have been leasing the Property when the Regulations came into force. The Tribunal noted that significant information had been publicised to landlords around that time to aim to educate them as to their obligations. The Tribunal found it unsatisfactory that the Respondent appeared to have taken very little steps during the lengthy period that he had leased out the Property, to educate himself as to his legal obligations.
20. The Tribunal was not satisfied that there was any good reason for the deposit not having been properly lodged. The Tribunal did not find it satisfactory that the Respondent submitted that he did not take any advice to establish what his legal obligations were as a landlord under a private sector tenancy. It was noted that the Respondent had submitted in evidence that he had spoken a number of times with Safe Deposits Scotland to obtain advice on how to manage deposits in a joint tenancy. He submitted in evidence that he had lodged previous tenant's deposits into the scheme, following on from that advice. Therefore it appeared that he was aware of how he could manage joint tenant's deposits, but he disregarded that in this case. When asked why he hadn't lodged the deposit in the same way as he had done with previous tenants, and in light of the advice he had received from the scheme provider, he was unable to answer. It appeared to the Tribunal that there was a wilful disregard by the Respondent as to his obligations to lodge the Applicant's deposit. Any deposit received by a landlord from a tenant remains the tenant's money, and must be placed into a scheme. That money does not fall to belong to the landlord when received by them. The Respondent in his evidence referred to previous tenant's deposits having been lodged in the scheme and there being a "balance" of funds sitting in the scheme. However, the Regulations are quite clear that each deposit taken from each tenant requires to be lodged. What someone else may have paid previously is of no relevance. These moneys should not be interchanged. Each deposit paid belongs to each separate tenant and each must be lodged.
21. The Tribunal was also concerned to note that at the CMD, the Respondent submitted that he had placed part of the Applicant's deposit into the scheme, and a figure of £325 was referred to. However, it was clear at the Hearing that this was not in fact the case, and that none of the deposit had been lodged. No explanation by the Respondent was given as to why his position had changed.
22. The Tribunal did not consider it reasonable that the deposit had been withheld and not returned to the tenant. By his failure to lodge the deposit with a scheme, he had deprived the tenant of access to the scheme's arbitration service to determine whether or not the landlord was entitled to withhold said deposit.
23. The Tribunal considered this to be a serious case of intentional withholding of a deposit. The Respondent was aware of his obligations to lodge the deposit in the scheme, and chose not to do so. The Tribunal did not consider that there

were any mitigating factors in this case and that the order made should be at the higher end of the scale, at three times the amount of the deposit taken.

- Decision

24. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent(s) for payment to the Applicant in the undernoted sum:

Sum of ONE THOUSAND TWO HUNDRED AND THIRTY-SEVEN POUNDS AND FIFTY PENCE (£1237.50) STERLING

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Fiona Watson

Legal Member/Chair

Date: 15 July 2022