

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/PR/22/0515

Re: Property at 68 Adelphi Place, Edinburgh, EH15 1BE (“the Property”)

Parties:

**Mr Raymond Conley-Smith, 43 Baileyfield Crescent, Edinburgh, EH15 1BX
 (“the Applicant”)**

**Ms Melanie McSherry, 61 Milton Crescent, Edinburgh, EH15 3PQ (“the
Respondent”)**

Tribunal Members:

Virgil Crawford (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that**

BACKGROUND

1. By Lease dated 21st January 2020 the Respondent let the Property to the Applicant;
2. The start date of the tenancy was 25th January 2020;
3. The lease provided for payment of a tenancy deposit of £1,275.00. This was paid by the Applicant to the Respondent;
4. The tenancy deposit was lodged with an approved scheme, namely Safe Deposits Scotland, on 30th January 2020;
5. The prescribed information required to be forwarded to the Applicant in terms of Regulation 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the TDS Regs”) was forwarded to the Applicant when the tenancy deposit was lodged with Safe Deposits Scotland;

6. The tenancy ended on 1st December 2021;
7. The application to the Tribunal was made on 23 February 2022

THE CASE MANAGEMENT DISCUSSION

8. Both Parties participated in the case management discussion which was conducted by teleconference;
9. At the outset the Tribunal enquired of the Applicant as to the basis of the application to the Tribunal. The application appeared to be for a breach of the TDS Regs. It seemed clear, however, that the tenancy deposit was lodged with an approved scheme within a matter of days, and certainly well within the 30 day period permitted by the TDS regs. It seemed clear that the prescribed information had been forwarded to the Applicant. There did not appear to be any basis for a penalty being imposed upon the Respondent for a breach of the TDS Regs;
10. The Applicant advised that as he understood it the rules of Safe Deposits Scotland had not been complied with. In particular, he submitted that when the deposit was lodged the Respondent's previously appointed letting agents had been detailed as the registered landlord and their details were given as the point of contact. The Respondent subsequently terminated the appointment of her agents and assumed responsibility for managing the Property herself. The Applicant asserted that there was then a delay in advising Safe Deposits Scotland of that change to the person now managing the Property. He claimed this was not updated until the end of the tenancy and that caused problems when he requested repayment of the deposit;
11. The Applicant confirmed that the dispute resolution process provided by Safe Deposits Scotland was engaged and a decision ultimately made that some of the deposit funds would be returned to the Applicant with the balance being due to the Respondent;
12. When the Tribunal put specific points to the Applicant he accepted:-
 - a) A certificate issued by Safe Deposits Scotland confirmed the deposit funds were lodged on 30th January 2020, well within the 30 day time period permitted within the TDS Regs;
 - b) The prescribed information required to be issued to the Applicant by Reg 42 of the TDS Regs had been issued;
 - c) The landlord named in the lease was the Respondent, rather than the letting agents;
 - d) The Landlord detailed in the certificate issued by Safe Deposits Scotland detailed the Respondent as the landlord;
 - e) The dispute resolution service available to the Parties was engaged;
13. The Tribunal pointed out that the application before it was one which sought that a penalty be imposed on the Respondent for a breach of the TDS Regs. While the Applicant referred to rules operated by Safe Deposits Scotland in relation to how the deposit would be administered by them it was not the function of the Tribunal to make any determination in relation to any such rules. The Tribunal required to consider legal matters and, in this case, whether there had been a breach of the TDS Regs. It was clear there had been no such breach;

FINDINGS IN FACT

14. The Tribunal found the following facts to be admitted or proved:-

- a) By Lease dated 21st January 2020 the Respondent let the Property to the Applicant;
- b) The start date of the tenancy was 25th January 2020;
- c) The lease provided for payment of a tenancy deposit of £1,275.00. This was paid by the Applicant to the Respondent;
- d) The tenancy deposit was lodged with an approved scheme, namely Safe Deposit Scotland, on 30th January 2020;
- e) The prescribed information required to be forwarded to the Applicant in terms of Regulation 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the TDS Regs") was forwarded to the Applicant when the tenancy deposit was lodged with Safe Deposit Scotland;

REASONS FOR DECISION

15. On the basis of the information before the Tribunal there has been no breach of the TDS Regs.

DECISION

The Tribunal dismissed the application.

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.

Virgil Crawford

8th July 2022

Legal Member/Chair

Date