



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/22/0655

Re: Property at 336 Easter Road, Edinburgh, EH6 8JR (“the Property”)

Parties:

Miss Jaclyn Otto, Mr Kiran Solanki, 53 The Drive, Rickmansworth, Hertfordshire, WD3 4EA (“the Applicants”)

Ms Susan Findlay, Burnside House, East Loan, Prestonpans, EH32 9ED (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision

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

Background

This was an application dated 3rd March 2022 brought in terms of Rule 103 (Application for order for payment where landlord has not paid the deposit into an approved scheme) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended. The application was made under Regulation 9 of the *Tenancy Deposit Schemes (Scotland) Regulations 2011* (“the 2011 Regulations”).

The Applicants sought payment of compensation in respect of an alleged failure by the Respondent to pay the deposit the Applicants provided of £1,492.50 in relation to the tenancy into an approved scheme within 30 days of receipt of that sum.

The Applicants provided with their application copies of a tenancy agreement and various supporting documentation.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 6th April 2022, and the Tribunal confirmed execution of service.

Both parties helpfully e-mailed written submissions to the Tribunal in advance of the Case Management Discussion.

The Case Management Discussion

A Case Management Discussion was held on 24th May 2022 by Tele-Conference. The Applicants both participated, and were not represented. The Respondent participated, and was not represented.

The Respondent accepted that she was in breach of the 2011 Regulations. The Respondent explained that she had been aware of her obligations to lodge a deposit in an approved scheme, but that she had not done so through oversight on her part.

The Respondent explained that this tenancy agreement was the first time that she had let out a residential property, and it was not her main source of income. She had used a letting agent to find a tenant, but not to manage the property during the tenancy. She was a very inexperienced landlord.

She had lost her employment in August 2020 as a result of the Covid pandemic, and had moved out of the Property, in which till then she had resided, and let it to the Respondents to generate income to pay her mortgage. She moved in with her partner and his children somewhat earlier than she might otherwise have planned for this reason, and commenced working self-employed.

The Respondent explained that her failure to pay the deposit into an approved scheme was due to inadvertence on her part, and for which she bore responsibility. She had simply overlooked doing so as a result of her inexperience, and as a result of the issues she had to deal with as a result of the loss of her employment and the Covid pandemic.

When the Applicants sought return of their deposit at the end of the lease in February 2022, the Respondent immediately repaid the whole deposit to them within 24 hours.

The Applicants were not in a position to gainsay the Respondent's explanation, and suggested that a "mid-range" of compensation would be appropriate to reflect their concern at the deposit not having been lodged for the duration of the tenancy of one year. The lease commenced on 19th February 2021 and terminated on 27th February 2022.

Reasons for Decision

This application was brought timeously in terms of regulation 9(2) of the 2011 Regulations.

Regulation 3 of the 2011 Regulations (which came into force on 7th March 2011) provides as follows:

“(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.”

The Respondent as landlord was required to pay the deposit into an approved scheme. She accepted that she failed to do so.

Regulation 10 of the 2011 Regulations provides as follows:

“If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal -

- (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 First-tier Tribunal 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.”

The Tribunal was satisfied that the Respondent did not comply with her duty under regulation 3, and accordingly that it must order the Respondent to pay the Applicants an amount not exceeding three times the amount of the tenancy deposit.

In the case of *Jenson v Fappiano* 2015 G.W.D 4-89, Sheriff Welsh opined in relation to regulation 10 of the 2011 Regulations that there had to be a judicial assay of the nature of the non-compliance in the circumstances of the case and a value attached thereto which sounded in sanction, and that there should be a fair, proportionate and just sanction in the circumstances of the case. With that assessment the Tribunal respectfully agrees.

In the case of *Tenzin v Russell* 2015 Hous. L. R. 11, an Extra Division of the Inner House of the Court of Session confirmed that the amount of any award in respect of regulation 10(a) of the 2011 Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.

In determining what a fair, proportionate and just sanction in the circumstances of this application should be, the Tribunal took account of the facts that the Respondent had no specialised knowledge of housing law or regulations, that she did not engage in the letting of property as her full-time occupation, had overlooked paying the deposit into an approved scheme due to her personal situation caused by the Covid pandemic, had swiftly repaid the deposit in full to the Applicants within 24 hours of being asked for its return at the end of the tenancy, and accepted at the first opportunity before the Tribunal that she was at fault and had contravened Regulation 3 of the 2011 Regulations.

In these circumstances, the Tribunal considered that albeit ignorance of the terms of the 2011 Regulations was no excuse or defence to not complying with them, the foregoing factors did represent mitigation in respect of the compensation to be awarded in the exercise of its judicial discretion.

However, balanced against these mitigating factors, were the fact that the Respondent received payment of the deposit in February 2021 and did not comply with her legal obligations as a landlord with respect to the 2011 Regulations, which regulations have been enacted to provide protection to tenants in respect of their deposit and to ensure that they can obtain repayment of their deposit at the conclusion of the lease, and the fact that the period during which the deposit was not lodged in an approved scheme and during which the Applicants did not have the security provided by such lodging was significant (just over one year).

Balancing these various competing factors in an effort to determine a fair, proportionate and just sanction in the circumstances of this application, the Tribunal considers that the sum of £1,492.50 (once the amount of the tenancy deposit) was an appropriate sanction to impose.

Decision

For the foregoing reasons, the Tribunal ordered the Respondent in respect of her breach of Regulation 3 of the 2011 Regulations to make payment to the Applicants of the sum of £1,492.50 in terms of Regulation 10(a) of the 2011 Regulations.

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.

Neil Kinnear

24th May 2022

Legal Member/Chair

Date