



**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/22/0821

Re: Property at 6 Nether Craigwell, Edinburgh, EH8 8DR ("the Property")

Parties:

Ms Jingyi Wu, 52/6 Lochend Gardens, Edinburgh, EH7 6DF ("the Applicant")

Ms Claire Harrington, Southbank House, Harper Brae, Peniculk, EH26 8PB ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member)

Decision

At the Case Management Discussion ("CMD") which took place by telephone conference on 30 May 2022 the Applicant was not in attendance but was represented by Mr Andrew Wilson of Community Help & Advice, Edinburgh. The Respondent was not in attendance but was represented by her husband, Mr Neil Harrington.

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

Prior to the CMD the Tribunal received from Mr Harrington on behalf of the Respondent written Submissions in response to the application under cover of an email dated 30 April 2022.

Prior to the CMD the Tribunal also received from the Applicant's representative, Mr Wilson, an email dated 23 May 2022 with Submission attached.

The following issues are not in dispute between the parties:-

- The Respondent leased the Property to the Applicant and two others in terms of a Private Residential Tenancy Agreement dated 21 August 2021 ("the PRT").
- The PRT commenced on 1 September 2021.
- At the outset of the PRT the Applicant, at the request of the Respondent, paid to the Respondent a deposit of £2,200. Payment was made on 23 August 2021.

- The Respondent did not, at any point during the tenancy or subsequently, pay the deposit into an approved scheme as required in terms of Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations").

The Case Management Discussion

In addition to the application and the written representations of the parties, the Tribunal had regard to the following oral submissions:-

For the Applicant:-

Mr Wilson made the following representations:-

- i. That the Applicant removed from the Property at the end of December 2021. The Applicant's co-tenants stayed on for a further week until they obtained negative COVID tests.
- ii. That he was unaware of how much of the deposit had been repaid to the Applicant. No sums had been repaid prior to the application to the Tribunal being made.
- iii. No separate Tribunal application had yet been made for the return of the deposit itself.
- iv. That the Respondent admits a breach of the Regulations.
- v. That the Applicant has no information on how often the Property has been let by the Respondent etc and will accept the Respondent's representations in that connection.
- vi. That he only acted for the Applicant and not the other tenants under the PRT although one of the other tenants had assisted in providing information to support the application.
- vii. That the Applicant paid the entire deposit.
- viii. That the application also referred to the Respondent's failure to provide information under the Regulations.

For the Respondent:-

Mr Harrington made the following representations:-

- i. He was not sure when the Applicant moved out but the Property was fully vacated on 7 January 2022.
- ii. None of the deposit had been repaid as at the CMD.
- iii. The Property had originally been a second home of the Respondent and Mr Harrington. Title is in joint names. They had previously been unable to sell the Property.
- iv. The Property had been rented out once before around 10 years ago.
- v. More recently the Property had been rented for 3-4 years as AirBnB type accommodation and was also sometimes occupied by family members.
- vi. The PRT was the first time the Property had been rented in this manner.
- vii. The Respondent and Mr Harrington do not rent out any other properties.
- viii. Advice was not taken from a letting agent.
- ix. Mr Harrington's office manager, Ellie Innes, was asked to deal with the tenancy arrangements.
- x. The only reason none of the deposit had been returned was that the Respondent was awaiting details of sums due to Scottish Gas. After the Applicant and the other tenants removed contact was made with Scottish Gas to discover nothing had been paid and the supply had not been transferred into their names. Scottish Gas said it would take 4 weeks to resolve the position and Mr Harrington chased every 2 weeks and kept the Applicant updated.

- xi. Photos of the Property were sent to the Applicant. Cleaning was required and there was damage to a picture frame. Account was taken of normal wear and tear. The Respondent and Mr Harrington dealt with the position fairly and honestly. The Applicant was content with the position too.
- xii. The Respondent fully appreciated the purpose of the Regulations and the importance of the adjudication scheme operated under those arrangements.
- xiii. The Respondent thought Ellie Innes had lodged the deposit into an approved scheme. Ellie Innes thought the Respondent had dealt. The first time the Respondent realised the deposit had not been lodged was when the Tribunal paperwork was served.
- xiv. On receipt of the Tribunal papers Mr Harrington contacted the Tribunal office to ask whether any of the deposit could be paid back to the Applicant but got no answer.
- xv. £769.64 of the deposit is due to be returned (the calculation of that amount being per the Respondent's written submissions) and the Respondent is happy to pay that amount.
- xvi. In response to a question from the Tribunal as to why the terms of the Scottish Government Model Private Residential Tenancy Agreement had been edited to remove reference to the deposit scheme in the PRT signed by the parties, no explanation could be given. Mr Harrington accepted that this editing looked "suspicious".
- xvii. The Respondent accepted that information required by Regulation 42 had not been given to the Applicant with particular reference to the deposit scheme details.
- xviii. That the Respondent had acted properly, fairly and honestly in her dealings with the Applicant. The maximum penalty payable under the Regulations should be reserved for landlords who had been dishonest.

Reasons for Decision

The Tribunal takes a landlord's failure to comply with the Regulations very seriously.

In terms of Regulation 10 of the Regulations it is stated:-

"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;"

Having admitted a breach of the Regulations - both failure to lodge the deposit into an approved scheme and a failure to provide prescribed information - the Tribunal is obliged to make an order against the Respondent.

In determining the amount payable by the Respondent to the Applicant the Tribunal took into account the following:-

- i. That the Respondent was aware of the Regulations yet she failed to comply with them and failed to ensure that Ellie Innes had complied with them on her behalf.
- ii. That the deposit was unprotected for the entire duration of the PRT.

- iii. That the Applicant was deprived of the adjudication process operated by an approved scheme operating under the Regulations relative to the return of the deposit.
- iv. That in creating the PRT the Respondent had edited out from the Scottish Government Model Private Residential Tenancy Agreement the mandatory text relative to the lodging of a deposit into an approved scheme in accordance with the Regulations which was, somewhat unsatisfactorily, unexplained and otherwise serves as a reminder to a landlord of his/her statutory duties under the Regulations.
- v. That even after her failure to comply with the Regulations came to her attention the Respondent still omitted to lodge the deposit into an approved scheme.
- vi. That the Respondent had also failed to comply with Regulation 3(b) of the Regulations and had failed to provide to the Applicant information relative to the deposit scheme arrangements in terms of Regulation 42.
- vii. That as at the CMD the Respondent had not refunded any of the deposit.
- viii. That the Respondent is not a commercial landlord having no other leased properties.
- ix. That the Respondent's failure to comply with the Regulations is not excusable.
- x. That the Respondent's failure to adhere to the terms of the Regulations sits towards the most serious end of the scale of penalties available to the Tribunal in terms of the Regulations.

The Tribunal therefore determined that, having regard to the foregoing, the Respondent must pay to the Applicant a sum of £4,400 by way of a penalty for her failure to comply with the Regulations, being the 2 times the deposit. Such a penalty is proportionate, fair and just and reflects the Tribunal's view that the Respondent's failure to comply with the Regulations is a serious matter.

Decision

The Respondent is ordered to pay to the Applicant a sum of £4,400.

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.

Gillian Buchanan

30th May 2022

Legal Member/Chair

Date