



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under The Tenancy Deposit Schemes (Scotland) Regulations 2011 as amended by The Tenancy Deposit Schemes (Scotland) Amendment Regulations 2019. (“the Regulations”).

Chamber Ref: FTS/HPC/PR/22/0982

Re: Property at 75 Port Dundas Road, Flat 4/2, Glasgow, G4 0HF (“the Property”)

Parties:

Mrs Abeer Alghamdi, sometime residing at 75 Port Dundas Road, Flat 4/2, Glasgow, G4 0HF (“the Applicant”)

Lowther Homes Ltd, 25 Cochrane Street, Glasgow, G1 1HL (“the Respondent”)

75 Port Dundas Road, Flat 4/2, Glasgow, G4 0HF (“the Property”)

Tribunal Member:

Martin McAllister (Legal Member) (“the tribunal”)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) determined that the Respondent pay the sum of Four Hundred Pounds (£400) to the Applicant.

Background

- 1. On 5TH April 2022, the Tribunal received an application from the Applicant seeking payment of a sum in compensation under regulation 10(a) of the Regulations. Neither the Applicant nor the Respondent submitted any written representations.**
- 2. A case management discussion was held on 30th June 2022 at which the Applicant was present and there was no appearance by the Respondent. It was continued to 16th August 2022 for further information to be provided to the tribunal. The Applicant submitted documentation prior to the latter case management discussion.**

3. A case management discussion was held on 16th August 2022. The Applicant was present. There was no appearance by the Respondent. The tribunal noted that details of the case management discussion had been sent to the Respondent by recorded delivery mail on 25th July 2022.

4. The Tribunal had regard to the following documents:

- i) Application dated 28th March 2022;
- ii) Private Residential Tenancy Agreement dated 21st October 2021;
- iii) Email to the Applicant from SafeDeposits Scotland dated 17th January 2022.
- iv) Undated letter from the Respondent to the Applicant.
- v) Communication from SafeDeposits Scotland confirming date of lodging of tenancy deposit.
- vi) Copy of Applicant's bank statement showing payment of rent and tenancy deposit.
- vii) Copy of instruction for transfer of rent and tenancy deposit to the Respondent.

5. The Law

The Tenancy Deposit Schemes (Scotland) Regulations 2011

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.

9. (1) A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.

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.

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.

Findings in Fact

- 5.1 The Applicants and the Respondent were parties to a Private Residential Tenancy Agreement for the Property dated 21st October 2021.**
- 5.2 The tenancy commenced on 22nd October 2021 and came to an end on 3rd August 2022.**
- 5.3 The Applicants paid a tenancy deposit of £880 to the Respondent on 21st October 2021.**
- 5.4 The Respondent lodged the tenancy deposit with an approved tenancy deposit scheme on 7th December 2021.**

Finding in Fact and Law

- 6. The tenancy deposit required to be paid to an approved tenancy deposit scheme by 3rd December 2021 which was thirty working days from commencement of the tenancy.**
- 7. The Respondent did not timeously provide the Applicant with the information prescribed by the Regulations.**

Reasons

- 8. The Tribunal was satisfied that it had sufficient information to determine the application and that the Respondent had chosen not to participate in the process. It had made no written representations and had not participated in either case management discussion.**
- 9. The Applicant said that she had transferred money in respect of rent for the Property and the tenancy deposit from the Bank of Scotland account which belonged to her and her husband. She referred to the copy bank statement which she had lodged and which showed a payment of £1,137 going from her account on 21st October 2021. She said that this was for rent and a tenancy deposit of £880.**
- 10. The Applicant said that the tenancy commenced on 22nd October 2021 and she referred to the private rented tenancy agreement which had been lodged.**
- 11. The Applicant said that the tenancy terminated on 3rd August 2022 and that she is now residing in Saudi Arabia.**
- 12. The Applicant said that she cannot remember when she got the undated letter from the Respondent.**

13. The tribunal noted the terms of the undated letter from the Respondent. It apologised for an administrative error and stated that the deposit was lodged with SafeDeposits Scotland but that the Respondent had not written to the Applicant to confirm that this had been done. The letter purports to send a notice “setting out the information you should have received.” The letter goes on to state that the deposit was not at risk at any time and that the Applicant has the right to make an application to the Tribunal.
14. The Applicant said that, other than the undated letter, she received no communication from the Respondent with information about the tenancy deposit and how it was to be dealt with.
15. The Applicant referred the tribunal to the communication which she had got from SafeDeposits Scotland which confirmed that the Respondent had received the tenancy deposit on 22nd October 2021 and that it had been paid to the tenancy deposit scheme 7th December 2021.

Determination

16. The matter was focussed. There had been a breach of the Regulations and the letter from the Respondent acknowledged this.

The Sanction

17. The creation of regulations to cover tenancy deposits was to protect tenants’ funds and to provide a structured process of dispute resolution. The Respondent received £880 as a tenancy deposit and lodged it with an approved deposit scheme on 7th December 2021 which was four days outwith the period of thirty working days of the beginning of the tenancy. It did not timeously provide the Applicant with the necessary information required in terms of Regulation 42 of the Regulations.
18. The tribunal accepted that the Respondent did not provide the Applicant with the information required in terms of Regulation 42 of the Regulations.
13. The Regulations are clear in stating that, where there is a breach such as this, the Tribunal must make an order requiring a landlord to pay a tenant a sum not exceeding three times the amount of the tenancy deposit. The amount is a matter of judicial discretion and must reflect what is a fair, proportionate and just sanction, having regard to the purpose of the Regulations and the gravity of the breach. It is a balancing act.
14. In this particular case, the Tribunal had regard to the fact that the deposit was not protected within thirty working days of having been paid.

15. The Tribunal had regard to and adopted the approach of the Court in *Russell-Smith and Others v Uchegbu* (2016) SC EDIN 64 where the Sheriff had effectively stated there to be two broad aspects to the sanction. The first was the period of time the deposit was unprotected and the second with regard to breach of the Regulations is a sum to reflect a weighting taking into account the particular circumstances of the case including the landlord's experience etc.
16. The deposit was unprotected for a period of four days and it is considered that an appropriate sanction for that aspect of the application is £100.
17. The Respondent is a professional landlord and should have in place a robust system to ensure that tenancy deposits are dealt with timeously and that information is provided to tenants so that the Regulations are complied with.
18. The Regulations were breached both in the protection of the tenancy deposit and in the provision of information. The tribunal considered that an appropriate sanction for breach of the Regulations was £300.
19. The cumulative sanction imposed by the tribunal is £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.

**Martin J. McAllister,
Legal Member
16th August 2022**