



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

Chamber Ref: FTS/HPC/PR/22/1414

Re: Property at 3 Kinloch Park, Dundee, DD2 1EF (“the Property”)

Parties:

Dr Josh Jones, Dr Helen Joanna Jones (“the Applicants”)

Northwood Dundee Ltd., 2 Panmure Street, Dundee, DD1 2BW (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicants in the sum of £1300.

Background

1. By application received in the period between 13th May and 7th July 2022 and made under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”), the Applicants applied for an order in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”).
2. The Applicants lodged a copy of the tenancy agreement between the parties that commenced on 19th July 2021 and ended on 4th May 2022, correspondence between the parties, correspondence between the Applicants and the local authority, an end of tenancy notice, and information from the three approved tenancy deposit schemes stating that the tenancy deposit was not lodged.
3. Following queries raised during the sifting process by the Housing and Property Chamber, concerning the fact that the details on landlord registration showed a different landlord, further enquiries were carried out by the Applicants to ascertain the name and address of the owner of the Property.

The owner was served with notification of the application and a Case Management Discussion as Respondent. He responded, stating that Northwood Dundee Ltd. were the landlords, as he had entered into a contract with them which allowed them to sublease the Property. Notification was then made upon Northwood Dundee Ltd. as Respondent.

The Case Management Discussion

4. A Case Management Discussion (“CMD”) took place by telephone conference on 20th September 2022. The Applicant, Dr Josh Jones, was in attendance. Mr Ron Campbell, Director, was in attendance on behalf of the Respondent.
5. Dr Jones said the Applicants paid a tenancy deposit of £1150 to the Respondent at the commencement of the tenancy. On day 10 of the tenancy, which was 29th July 2021, the Applicants emailed the Respondent to request details of the tenancy deposit scheme with which their deposit was lodged. They received no response. At the end of the tenancy, by email dated 8th May 2022, the Respondent’s Mr Nick Baines had stated ‘I can confirm that I have asked for the full deposit to be released.’ This was misleading, as it implied that the deposit had been lodged with an approved tenancy deposit scheme, when it had not been so lodged.
6. Responding to questions from the Tribunal concerning an email sent to the Respondent on 10th June 2022 requesting details of the landlord’s address, Dr Jones said no response had been received.
7. On behalf of the Respondent, Mr Campbell said it was accepted that the tenancy deposit had not been lodged with an approved tenancy deposit scheme for the duration of the tenancy. Mr Campbell said he was responsible for overseeing this area of work; however, he had been off for an extended period due to ill-health, and a senior property manager had stepped in. He was not aware of the email of 29th July 2021. With regard to the email of 8th May 2022, it was Mr Campbell’s position that Mr Baines would not have been aware when writing the email that the deposit was not lodged with the scheme. Responding to questions from the Tribunal as to who Mr Baines would have asked to release the deposit, Mr Campbell said that would have been himself or the accounts manager. It would have been discovered at that stage that the deposit had not been lodged.
8. Responding to questions from the Tribunal, Mr Campbell said there was no attempt to mislead the Respondent as to the identity of the landlord, and that the email requesting this information must have been missed.
9. Mr Campbell said the Respondent has instigated new procedures and checks to ensure that all deposits are lodged. He is the owner of the company. He takes responsibility for the error and takes the matter personally. He said he will ensure it does not happen again. He will also be looking into the matter of

the failure to respond to emails. Mr Campbell said the Respondent manages 230 properties in Dundee and Dunfermline. The business started in 2009.

10. Dr Jones responded to say that he had sympathy for Mr Campbell's position in regards to his health, however, it was a well-established business and should not have made such an error. The Applicants were dealing with a senior property manager. It was Dr Jones' position that the email of 8th May 2022 suggested that the tenancy deposit scheme would be instructed to release the deposit. That is how the email reads, and not as if it was referring to an office discussion.
11. Responding to the Tribunal regarding the level of award that should be made, Dr Jones said he was content to leave that to the discretion of the Tribunal. He reiterated his concern that the deposit was not lodged, considering the Respondent has been in business for 12 years, and the Respondent's failure to respond to emails.
12. Mr Campbell said he had never been in this position before and this was his first experience of a First-tier Tribunal. He accepted mistakes had been made and said mistakes happen. This was an administrative error. He was content to leave the level of award to the discretion of the Tribunal.

Findings in Fact and Law

13.
 - (i) The parties entered into a tenancy agreement in respect of the Property that commenced on 19th July 2021 and ended on 4th May 2022.
 - (ii) A tenancy deposit of £1150 was paid to the Respondent by the Applicants at the commencement of the tenancy.
 - (iii) The deposit was not lodged with an approved tenancy deposit scheme within 30 days of the commencement of the tenancy.
 - (iv) The deposit remained unprotected throughout the duration of the tenancy.
 - (v) The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.

Reasons for Decision

14. The Applicants' deposit was not lodged with an approved tenancy deposit scheme as required by Regulation 3. The deposit remained unprotected throughout the duration of the tenancy, which was almost ten months.

15. The Regulations were put in place to ensure compliance with the tenancy deposit scheme, and to provide the benefit of dispute resolution for parties. The Tribunal considers that its discretion in making an award requires to be exercised in the manner set out in the case *Jenson v Fappiano (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015* by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case. The Tribunal must consider the facts of each case appropriately.
16. The Tribunal took guidance from the decision of the Upper Tribunal UTS/AP/19/0020 which states: '*Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals.*'
17. The Tribunal considered this to be a serious matter, although not one at the most serious end of the scale. The Tribunal took into account that the Applicants had contacted the Respondent shortly after commencement of the tenancy, which ought to have served as a reminder of the need to lodge the tenancy deposit, bearing in mind that no such reminder should be necessary.
18. The Tribunal considered the Respondent's mitigating circumstances and noted that there was no attempt to deny responsibility for failing to comply with the Regulations, and that the matter was being taken seriously, with new procedures and checks being put in place.
19. However, the Tribunal took into account that the Respondent is an established company with considerable experience of letting properties. It considered it surprising that this error could occur, particularly when senior management had taken over from Mr Campbell. The Applicants were entitled to have confidence that the Respondent would comply with their duties as a landlord.
20. The Tribunal was not persuaded, on the information before it, that the Respondent had attempted to mislead the Applicants by the terms of the email of 8th May 2022, or by failing to respond to the Applicants' email of 10th June 2022.
21. Taking all the circumstances into account, the Tribunal decided it would be fair and just to award a sum of £1300 to the Applicants.

Decision

22. The Tribunal grants an order against the Respondent for payment to the Applicants of the sum of £1300 in terms of Regulation 10(a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

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.

Legal Member/Chair

20th September 2022
Date