



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

Chamber Ref: FTS/HPC/PR/22/1814

Re: Property at 4A Castle Terrace, Broughty Ferry, Dundee, DD5 2EG (“the Property”)

Parties:

Ms Rebecca Molden, 9 Ferryhill Place, Aberdeen, AB11 7SE (“the Applicant”)

Miss Andrea Douglas, 35 Grove Road, Broughty Ferry, Dundee, DD5 1JN (“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. The parties entered into a tenancy agreement by virtue of which the Applicant, along with another person, Molly Jakes, rented the Property from the Respondent;
2. The lease purported to be a short assured tenancy with a fixed period of 12 months from 5th July 2021 to 4th July 2022;
3. A tenancy deposit of £900 was paid by the tenants to the Respondent, that being paid on 5th June 2021;

4. The tenancy deposit was not lodged with an approved Tenancy Deposit Scheme at any stage;
5. The tenancy ended on 7th June 2022 following the tenants providing Notice to Leave to the Respondent;
6. Following termination of the tenancy it became apparent to the tenants that the tenancy deposit funds had never been lodged with an approved scheme. Correspondence was thereafter exchanged between the Parties resulting in £705 being repaid to the tenants, the Respondent retaining £195 to cover various costs associated with cleaning and repairs claimed to be required following termination of the tenancy;
7. An application seeking an order in terms of Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the TDS Regs”) was received by the Tribunal on 13 June 2022;

THE CASE MANAGEMENT DISCUSSION

8. Both Parties participated in the case management discussion by teleconference;
9. The application to the Tribunal was presented only by Miss Rebecca Molden, one of the tenants. The co-tenant, Molly Jakes, had intimated to the Tribunal that she was content for the application to proceed in the sole name of Miss Molden;
10. Miss Molden advised the Tribunal that it became apparent at the end of the tenancy that the tenancy deposit funds had not been lodged with an approved scheme. Thereafter, a disagreement ensued in relation to the need for cleaning and repair at the property. Miss Douglas returned £705 of the deposit to the tenants but retained £195;
11. Miss Molden advised the Tribunal that, had the deposit been repaid in full, there was a distinct possibility that this application would never have been presented but, as a matter of fact, the tenancy deposit was not repaid in full and, even if it had been, Miss Molden would still have been entitled to present an application to the Tribunal seeking an Order in terms of Regulation 10 of the TDS Regs;
12. Miss Molden pointed out that she, and her co tenant, were deprived of the ability to use a cost free dispute resolution service which would have been provided by a tenancy deposit scheme in resolving the disputed issues following the termination of the tenancy. She was also clearly disappointed at the content of some of the correspondence between the Parties in relation to the alleged cleaning and repairs required at the property;
13. Miss Douglas, the Respondent, accepted that the tenancy deposit funds had never been lodged with an approved scheme. She apologised for that. She suggested that this was due to exceptional circumstances as it occurred during the COVID pandemic period. She is a teacher, a key worker, and was

working throughout the pandemic but was also a single mother who was home schooling her child. She suggested that the pandemic affected many people and their way of working and that, as a result, the requirement to lodge the deposit was overlooked;

14. She pointed out that the deposit funds were always available. They had not been spent by her or otherwise disposed of. They were returned in large part at the end of the tenancy. She did retain £195 of the deposit which she considered to be an entirely reasonable amount considering the cost she apparently incurred in reinstating the property to its original state following the termination of the tenancy;
15. She advised that she has been a landlord for 7 years without any other issues or difficulties arising. She lets out one other property in addition to this one;
16. Miss Molden, in response, intimated that part of the work apparently undertaken in relation to the property following the termination of the tenancy was undertaken by Miss Douglas' partner rather than an independent tradesman. She disputed that the property was left in a worse condition than she received it;

FINDINGS IN FACT

17. The Tribunal found the following facts to be admitted or proved;
 - a) The parties entered into a tenancy agreement by virtue of which the Applicant, along with another person, Molly Jakes, rented the Property from the Respondent;
 - b) The tenancy commenced on 5th July 2021;
 - c) A tenancy deposit of £900 was paid by the tenants to the Respondent, that being paid on 5th June 2021;
 - d) The tenancy deposit was not lodged with an approved Tenancy Deposit Scheme at any stage;
 - e) The tenancy ended on 7th June 2022;
 - f) An application seeking an order in terms of Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the TDS Regs") was received by the Tribunal on 13 June 2022;

REASONS FOR DECISION

18. The Tribunal was presented with a situation where there was no dispute about the fact that the deposit funds had never been lodged with an approved scheme;
19. While the Respondent suggested that this was due to exceptional circumstances arising from the COVID pandemic, the Tribunal did not accept that. The Respondent, despite the COVID pandemic, still managed to arrange for a Lease to be issued to the Applicant, managed to arrange for the

deposit funds to be received together with rental payments during the period of the lease and lodging the deposit funds with an approved scheme is something which would have been done electronically in any event ?? not have taken a significant period of time. The Tribunal accepted, however, that there was an oversight rather than a deliberate intention not to lodge the deposit funds;

20. The Tribunal also accepted that the deposit funds were available throughout the tenancy and had not been otherwise disposed of;
21. The Tribunal accepted - indeed it was agreed - a large part of the deposit funds had been repaid to the tenants;
22. The Respondent, although misguided in her attempts to resolve issues relating to cleaning and repair at the end of the tenancy rather than having a tenancy deposit scheme resolution process resolve the issue - appears to have been trying to be fair in her assessment of the funds which were withheld and, of course, she withheld a relatively small proportion (21%) of the deposit funds rather than the entire deposit;
23. The Respondent has been a landlord for a period of 7 years but has only one other property and she is not someone who would be regarded as a commercial landlord;
24. Set against that, the Applicant was deprived of the ability to use the cost free dispute resolution process which should have been available to her had the deposit been lodged with an approved scheme;
25. The Applicant did have a portion of the deposit withheld without any ability to take meaningful action (other than these proceedings) to that situation at the time;
26. In the circumstances, the Tribunal considered this breach to be at the lower end of these type of cases. The Tribunal considered, therefore, that a penalty at the lower end of any scale available to it should be imposed;
27. While the TDS Regs do not make provision for the Tribunal to order repayment of the deposit by the Landlord to the tenancy the Tribunal was of the view that the Applicant was deprived of the ability to use the dispute cost free dispute resolution process, it would have been appropriate for the full deposit to have been repaid previously and, accordingly, considered that the amount of £195 which was withheld should be taken to form part of any penalty imposed upon the Respondents;
28. In addition, however the Tribunal did consider that it was appropriate to impose an additional penalty. The purpose of a penalty being imposed in such cases is to deter landlords from failing to lodge deposits and to inform other landlords of the risks of failing to do so. Having said that, for the reasons outlined above, the Tribunal considered that the failing of the Respondent in this case was at the lower end of any scale of culpability; In the circumstances, an additional amount of £250 was imposed as a penalty, resulting in a total penalty being imposed of £345;

29. The Tribunal enquired of the Respondent in relation to her income and outgoings and enquired as to whether she would be seeking a time to pay direction. The Respondent advised that she would not be seeking any such direction and, in the circumstances, an Order for payment in the sum of £345 was made;

DECISION

The Tribunal grants an order against the Respondent for payment of the sum to the sum of THREE HUNDRED AND FORTY FIVE POUNDS (£345.00) STERLING to the Applicant

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.

V. Crawford

2nd September 2022

Legal Member/Chair

Date