



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

Chamber Ref: FTS/HPC/PR/22/2331

Re: Property at 13 Gullane Crescent, Cumbernauld, G68 0HR (“the Property”)

Parties:

Mr Mark Andrew, 8 Glasgow Road, Dennyloanhead, Bonnybridge, FK4 1QF (“the Applicant”)

Yaskawa Electric UK Ltd, 50 Lothian Road, Festival Square, Edinburgh, EH3 9WJ (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the Respondent in the sum of Four hundred and fifty pounds (£450) Sterling

Background

- 1 The Applicant applied to the Tribunal seeking an order for payment as a result of the Respondent’s failure to lodge his deposit in an approved tenancy deposit scheme.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 6th October 2022. A copy of the application paperwork together with notification of the Case Management Discussion was served upon the Respondent by Sheriff Officers.

- 3 The Respondent's representative, Donna Cram of K Property, subsequently submitted a response to the application via email, which was crossed over to the Applicant. In summary, Mrs Cram explained that the failure to lodge the deposit had been due to human error, at a time when the country was in lockdown and their offices were closed. They hadn't realised that the deposit had not been lodged with a scheme, which was their standard practice. They had apologised to the Applicant for the oversight. The deposit had been held in a designated client's account which was a requirement to ensure the safe keeping of client funds. The deposit had been returned immediately to the Applicant following the termination of the tenancy on 28th June 2022 to ensure no delay or financial loss to the Applicant. Mrs Cram advised that she had made attempts to reach a settlement with the Applicant but he wished to proceed with the application to the Tribunal. She apologised again for the error which was due to very trying and unusual working conditions. Her firm was fully aware of the rules and regulations for deposits to be lodged with an approved scheme within 30 working days of the commencement of the tenancy. Mrs Cram confirmed that she would be representing the Applicant at the Case Management Discussion.

The Case Management Discussion

- 4 The Case Management Discussion took place on 6 October 2022. The Applicant was present. Mrs Cram represented the Respondent.
- 5 The Legal Member explained the purpose of the Case Management Discussion and the legal test to be applied. She asked the parties to address her on their respective positions. Their submissions are summarised below. For the avoidance of the doubt, this is not a verbatim account of what was discussed at the Case Management Discussion but a summary of those matters relevant to the Tribunal's determination of the matter.
- 6 The Applicant explained that the deposit had not been lodged with a deposit scheme and he felt he should be compensated as a result. The Respondent should have done things properly. The Applicant confirmed that the deposit had been returned in full to him, two days following the final inspection of the property on 28 June 2022. There had however been no explanation as to why it had not been put into a deposit scheme. There hadn't been any particular issues during the tenancy, although he did find it quite odd that things he had asked to be done weren't done, including the EICR and gas safety check. He had to arrange the gas safety check himself after the letting agent had asked him to phone the contractor. In response to questions from the Tribunal the Applicant advised that he would wish the maximum award under the 2011 Regulations.
- 7 Mrs Cram confirmed that her firm acted as letting agent for the Respondent. The Respondent did not therefore have a full understanding of what had taken place in this case. With regard to the Applicant's comments in respect of the

EICR and gas safety check, these were up to date. She pointed out that the EICR was required every five years. The gas safety check was shortly due to get renewed. Mrs Cram advised however that she didn't think this was relevant to the Tribunal's consideration of the deposit issue. She referred to her written representations that set out her position. She fully accepted that the deposit had not been lodged in a scheme and should have been. Her firm was well aware of the legislation and the requirements. She explained that it had been a difficult time, when staff were working from home and on furlough. Mrs Cram noted that the Applicant had not incurred any financial loss, his deposit had been returned to him timeously.

- 8 The Case Management Discussion concluded and the Legal Member confirmed that the decision would be issued in writing.

Relevant Law

- 9 The relevant law is contained with the Housing (Scotland) Act 2006 and the Tenancy Deposit Scheme (Scotland) Regulations 2011. Section 120 of the 2006 Act provides as follows:-

“120 Tenancy deposits: preliminary

(1) A tenancy deposit is a sum of money held as security for—

(a) the performance of any of the occupant's obligations arising under or in connection with a tenancy or an occupancy arrangement, or

(b) the discharge of any of the occupant's liabilities which so arise.

(2) A tenancy deposit scheme is a scheme for safeguarding tenancy deposits paid in connection with the occupation of any living accommodation.

- 10 The 2011 Regulations provide as follows:-

“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.

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.”

“9.—(1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal 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.”

Reasons for Decision

- 11 The Tribunal determined the application having regard to the application paperwork, the written representations and the verbal submissions at the Case Management Discussion. The Tribunal was satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. It was noted that the substantive facts of the matter were agreed.
- 12 The 2011 Regulations specify clear duties which are incumbent on landlords in relation to tenancy deposits. Regulation 3 requires a landlord to pay any deposit received in relation to a relevant tenancy to an approved tenancy deposit scheme within thirty working days of the beginning of the tenancy. The deposit must then be held by the scheme until it can be repaid in accordance with the requirements of the Regulations following the end of the tenancy.
- 13 It was a matter of agreement between the parties that the tenancy had commenced on 29 December 2020, that the Applicant had paid a deposit of £1350 to the Respondent on or around that date, and that the Respondent had not paid the deposit into an approved tenancy deposit scheme. The deposit had been returned to the Applicant two days after the tenancy had ended on 28 June 2022. The Respondent had also failed to provide the prescribed information to the Applicant regarding the scheme in which his deposit had been placed. The Respondent was therefore in breach of Regulation 3, which was accepted in the written representations submitted

and the verbal submissions by Mrs Cram at the Case Management Discussion.

- 14 Regulation 9 provides that any tenant may apply to the Tribunal for an order where the landlord has not complied with the duty under regulation 3. Further, under Regulation 10 in the event of a failure to comply, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. Accordingly having been satisfied that the Respondent had failed to comply, the Tribunal then had to consider what sanction to impose having regard to the particular facts and circumstances of the case. Whilst the Applicant had suggested a figure of three times the deposit, ultimately the decision as to the level of sanction was at the discretion of the Tribunal.
- 15 The Tribunal considered the requirement to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach. Ultimately this was not a situation where the Tribunal considered an award at the higher end of the scale was merited. The Tribunal accepted the Respondent's explanation for not lodging the deposit, and not providing the relevant information, timeously. It was reasonable to assume that the heightened working conditions at the time, with lockdown in place and offices closed, could have led to the oversight in failing to lodge the deposit. The Tribunal did not consider there to be any deliberate attempt on the Respondent's part to evade the duties imposed by the Regulations. They had relied upon their letting agent to ensure compliance with their statutory duties and Mrs Cram had been candid and upfront about their failings in this regard. The Tribunal had no reason to doubt her assertion that she and her colleagues were fully aware of the duties incumbent upon landlords under the 2011 Regulations.
- 16 The Tribunal also took into account that the deposit had been returned to the Applicant in full and not long after the tenancy had ended. The Applicant had therefore not suffered any detriment in that regard. It would have been of greater concern to the Tribunal had the Respondent sought to make any deductions from the deposit, as the Applicant would not have had the benefit of the independent dispute resolution mechanism offered by the tenancy deposit schemes. The deposit had however remained unprotected for the entire term of the tenancy.
- 17 The Tribunal had regard to the purpose of Regulation 10, namely to penalise landlords to ensure they comply with the duty to protect and safeguard tenancy deposits. The provisions of Regulation 10 leave no discretion where a landlord is found to have failed to comply and permit an award of up to three times the deposit where a finding of breach is made. Accordingly balancing the competing factors in the particular facts and circumstances of this case,

the Tribunal considered that a sanction in the sum of £450 would be appropriate, being one third of the deposit.

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.

Ruth O'Hare

6 October 2022

Legal Member/Chair

Date