



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/22/2640

Re: Property at 24 Roman Camp Cottages, Broxburn, EH52 5PJ (“the Property”)

Parties:

Miss Nicola King, c/o 92 Ivanhoe Rise, Dedridge, Livingston, EH54 6HZ (“the Applicant”)

Amanda Leask, Mr Tobias Leask, Chisholm Stone House, Struy, Beaully, IV4 7JS (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the respondents must pay to the applicant the sum of One Thousand Six Hundred and Six Pounds and Fifty Pence (£1,606.50)

Introduction

This application is under Rule 103 and Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Procedural history

Service of the application and intimation of the Case Management Discussion (CMD) was effected by Sheriff Officers upon the respondents on 30 August 2022.

The CMD took place by teleconference on 13 October 2022 at 10.00 am. The applicant represented her own interests. The respondents were represented by a friend, Ms Carole Morley. The respondents position as set out on their behalf is that

they did not receive the deposit and that if paid it ought not to be returned. The specifics of the stated defence is recorded in the CMD Note.

Following the CMD a Direction was issued which required the respondents to provide:

1. Disclosure of whether they were registered landlords in respect of the property, and if so the Registration number/s.
2. A copy of the written lease, if any, which was provided to the Applicant at the commencement of the lease.
3. A succinct list of the defects at the property said to exist at the end of the tenancy together with photographic evidence.
4. Witness statements from all persons (including themselves) relied upon to give relevant evidence in support of defence of the applications.

A warning in terms of The Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016 was set out in the said Direction. Compliance was required by 25 November but the respondents failed to comply.

The hearing 10 January 2023

The applicant again represented her own interests. The respondents were represented by their lay representative Ms Carole Morley. The second named respondent Mr Leask also joined the hearing.

It was submitted by Ms Morley and Mr Leask that the Direction issued in October 2022 had not been received but the Tribunal has evidence that this was sent to Ms Morley as the respondents' representative to her email address as requested. The Tribunal confirmed with Ms Morley that the correct address was held and had been used.

The applicant and Mr Leask both gave oral evidence in respect of the issues in dispute.

Findings and Reasons

The property is 24 Roman Camp Cottages, Broxburn EH52 5PJ.

The parties entered into a tenancy agreement in respect of the property which commenced in May 2016. No written lease has been produced to support these applications, but there are numerous email exchanges which adequately evidence the entering into of a lease arrangement. All of the conditions for the creation of an assured tenancy under the Housing (Scotland) Act 1988 were fulfilled.

Rent was agreed at a rate of £535.50 per calendar month. A deposit in the same sum was also agreed to be paid.

The applicant paid the deposit of £535.50 as a deposit to Lawlets Limited on 6 May 2016. This is vouched in terms of the applicant's bank statements (Bank of Scotland), together with other email correspondence.

The applicant never received confirmation of the payment of her deposit into an approved scheme and was not provided with the necessary information regarding the protection of her deposit.

The tenancy came to an end on 10 May 2022 when the applicant vacated the property.

Mr Leask admitted in his oral evidence that neither he nor his wife were registered landlords throughout the entire duration of the tenancy and written confirmation of this in the form of email correspondence with West Lothian Council had been provided some three days before the hearing.

The applicant has not received return of her deposit and this is the subject of an outstanding parallel application which the tribunal continues to consider the merits of. It has not been possible to determine that application due to additional evidence which the parties rely on which has not yet been lodged.

The respondents claim that they did not receive the deposit. They have had assistance with the letting of the property, initially from LawLets and thereafter from Tayforth Properties. Email communications relied upon by the respondents themselves evidence that the deposit, vouched to have been paid to LawLets, was passed directly to them.

The respondents' position was spoken to by Mr Leask and supported by additional representations by Ms Morley.

The tribunal did not find the evidence of Mr Leask credible and reliable. Whilst bank statements for the respondents were relied upon to support the contention that the deposit was not received by them this does not exclude the clear likelihood of the deposit having been paid to them to another source. Mr Leask suggested there had been no deposit paid, or if there had, that the Letting Agent had not passed this over to him and his wife but there was no evidence of this.

The tribunal concluded that the respondents have not been diligent in acting as landlords. Mr Leask was very vague regarding the arrangements in place for the letting agencies employed to act and suggested that they decided what services to provide as opposed to him and his wife. This is incredible. He was vague regarding the whole letting arrangements and could not provide any evidence of arrangements he had made with the letting agents.

It is clear that the respondents have not focused their attention to the necessary administrative requirements of acting as landlords, best evidenced by their failure to be registered. Their failure to do constituted the commission of a criminal offence.

It is most likely that the applicant's deposit was paid to the respondents and not properly accounted for at that time. The respondents are responsible for the acts and omissions of their agents. There is no evidence of any complaint being raised or pursued by the respondents about their former agents. It is unlikely that registered

letting agents would have failed in their duties as suggested by the respondents or sought to mislead another professional in the manner insinuated.

The applicant must satisfy the Tribunal by the production of sufficient documentary evidence that the deposit was not held by any one of the three Tenancy Deposit Schemes operating in Scotland which are SafeDeposits Scotland, Mydeposits Scotland or Letting Protection Service Scotland. The applicant relied upon written documentation from the three Tenancy Deposit Schemes operating in Scotland. Email correspondence from all three schemes has been produced which vouches that the deposit paid by the applicant was not protected. This is credible and reliable documentary evidence. The fact that the deposit was not protected is not disputed by the respondents.

The Tribunal was satisfied that the respondents did not comply with the requirements of the 2007 Regulations and in particular had not lodged the deposit paid to an approved scheme. The duties of landlords are contained within Regulation 3. This requires the landlord who has received the tenancy deposit in connection with the relevant tenancy to pay the deposit to a relevant scheme administrator from an approved scheme within 30 working days of the beginning of the tenancy.

The Tribunal was satisfied that the respondents failed to comply with the duty in Regulation 3. Regulation 10 requires the Tribunal to make an Order against the respondent to pay to the applicant an amount not exceeding three times the amount of the tenancy deposit.

The Tribunal considered all relevant circumstances prior to making any Order under Regulation 10. The Tribunal is satisfied having regard to the entirety of the documentary and oral evidence that the respondents failed to act diligently and professionally and failed to account to the applicant in the required manner in respect of the deposit. There are no mitigating circumstances of any merit.

In all the circumstances, the Tribunal ordered that the respondent pay to the applicant the sum of three times the amount of her tenancy deposit ie a total of £1606.50. This is fair and proportionate in all of the circumstances. The public require to have confidence that residential landlords are operating fairly and that their deposits are secured in accordance with the law in force in Scotland. There are aggravating factors here. The respondents have failed to comply fully with the tribunal process. They delayed in openly accepting that the applicant paid her deposit despite the clear evidence otherwise. They acted as unregistered landlords.

The Tribunal was satisfied that the respondents let the property as unregistered landlords. It is stated that they are selling the property and have no intention to let the property again. However the Tribunal has a duty in terms of section 72 of the 2016 Act to report this.

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.

10 January 2023

Legal Member/Chair

Date