



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/CV/2948

Re: Property at Flat 2/1 38 Earnock Street, Glasgow City, G33 1HL (“the Property”)

Parties:

Mr Robin Anyadiegwu, 228 Canterbury Way, St Nicholas, Stevenage, SG1 4DW (“the Applicant”)

Mr Howard Hasha, 2 Somersby Close, Farley Hill, Luton, LU1 3XB (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for payment in the sum of EIGHT HUNDRED POUNDS (£800)

Background

1. The applicant submitted an application seeking an award under regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The application was accepted on 30th August 2022.
2. The following documents were lodged with the application :
 - “Assured Short hold tenancy agreement”
 - Copy email correspondence between the parties
 - Copy text messages between the parties

- Copy bank statement from the applicant
3. The present application was conjoined with an application seeking payment of £400 in respect of a deposit which had not been returned to the applicant under reference number **FTS/HPC/CV/22/2949**.
 4. The respondent lodged written submissions and photographs of the property in advance of the case management discussion.

First case management discussion (“cmd”) – teleconference – 30th January 2023

5. Both parties attended the first case management discussion.
6. Both parties confirmed that the applicant moved into the property after signing a lease agreement on 5th March 2018. The agreed rent was £400 per month. Initially the applicant moved into the property on his own however, his brother Ivan Anyadiegwu joined him shortly after he moved into the property. The rent was subsequently reduced to £300 per month after Ivan Anyadiegwu moved out of the property in February 2022. Both parties confirmed that a deposit of £400 had been received after the tenancy commenced.
7. The respondent accepted that the deposit had not been placed in a suitable tenancy deposit scheme. He stated that as the applicant was a lodger in the property he had understood that he did not have to place the deposit in a tenancy deposit scheme.
8. Both parties agreed that the applicant moved out of the property and returned the keys to the respondent on 14th May 2022. Text messages lodged by the applicant showed a text message dated 19th April 2022 which read *“On another note, Howard, I can now confirm that I will be moving out on May 14 (Saturday).”*
9. A text in reply dated 25th April 2022 from the respondent to the applicant stated *“All noted and thanks for the mini heads-up still. I’ll see you Friday 13th May then so I can collect keys and inspect flat.”*
10. The applicant explained that he moved out on the 14th May 2022 but as he left in the middle of the month, he thought that he was liable for the whole month’s rent. He therefore paid a full month’s rent in arrears on 5th June 2022. The respondent confirmed that he had received the full months’ rent for May 2022. He stated that he had not asked the applicant to pay a full month’s rent but had

not returned any portion of the rent to reflect the fact that the applicant had moved out on 14th May 2022.

11. The tenancy agreement which had been completed by the parties purported to be an assured short hold tenancy. The respondent confirmed that the document was printed off the internet. He had not been aware that the tenancy agreement referred to the English legislation rather than the applicable Scottish legislation.
12. The applicant contended that as he had paid rent on 5th June 2022 for the previous month, the date the tenancy ended was 5th June 2022.
13. The respondent's position was that the tenancy ended on the date the applicant moved out of the property and returned the keys. He stated that the day after the applicant moved out, he arranged for the locks to the property to be changed. His position was that as the tenancy ended on the 14th May 2022, the present application was submitted outwith the three month time limit set out in regulation 9 and was therefore incompetent.
14. The respondent stated that the arrangement between parties was that the applicant was a lodger rather than a tenant. He stated that the applicant and his brother had occupied one room of the three-bedroom property. He stated that after the applicant moved in he continued to have a room in the property where he kept personal possessions. He explained that the room was locked whilst he was away and that he returned to the property from time to time. He explained that the property had been his principal home until he had to move to Luton to work. He stated that the reason he had rented the property out was to ensure it was looked after whilst he was away.
15. When the Tribunal enquired why the respondent asked the applicant to sign a tenancy agreement if the arrangement was that of a lodger and resident landlord the respondent stated that he did so as he wanted "something in writing" and after taking advice from Glasgow City Council.
16. The applicant disputed that he had been a lodger. He stated that whilst there were locks and keys on the bedrooms these were not used. He stated that in the four years that he had occupied the property the respondent had returned to stay briefly on only two occasions.

Consideration of whether the Tenancy Deposit Regulations apply

17. In terms of regulation 3 and section 83 (6) of the Antisocial Behaviour etc. (Scotland) Act 2004 the regulations do not apply where the landlord occupies the property as their only or main residence.
18. The Tribunal considered the written information which had been lodged by parties and the oral representations at the cmd. The applicant had signed a tenancy agreement and occupied the property, paying a monthly rent. The respondent had kept a room in the property for his own use however, the Tribunal accepted the applicant's evidence that the respondent did not occupy the property as his main residence. The Tribunal accepted the applicant's evidence that the respondent returned to stay in the property on just two occasions over the four-year duration of the lease and accordingly the Tribunal determined that regulation 3 was satisfied and that the regulations did apply.

Consideration of whether the present application is time barred.

19. Regulation 9 states that any application must be made no later than 3 months after the tenancy has ended.
20. The Tribunal required to consider whether the tenancy ended on the date the applicant moved out and returned the keys or whether the tenancy continued until the end of the period in respect of which the applicant paid rent i.e. 5th June 2022.
21. The lease document parties signed purported to be an assured short hold tenancy. The document referred to English legislation rather than the applicable Scottish legislation. The lease document had an original term of six months from 5th March 2018. Clause 4.6.1 which deals with the tenant giving notice states the tenancy may be terminated by "*The tenant giving written notice of at least four weeks and expiring on the last day of a rental period of the tenancy.*"
22. As the tenancy was entered into after the Private Housing (Tenancies) (Scotland) Act 2016 came into force, the tenancy between parties is a private residential tenancy, notwithstanding the terms of the document signed by parties. Sections 48 and 49 of the Act set out the procedure for termination of a tenancy by a tenant. A tenant must give a landlord written notice of the date when the tenancy is to end. If the notice period is less than 28 days or the period

set out in the tenancy agreement then the landlord must agree in writing to the date stated in the notice.

23. In terms of the text messages lodged by the applicant, he provided the respondent with 25 days' notice that he wished to move out of the property on 14th May 2022. The respondent's response was : "All noted and thanks for the mini heads-up still. I'll see you Friday 13th May then so I can collect keys and inspect Flat".
24. Parties were in agreement that the applicant would move out of the property permanently on 14th May 2022 which is the date that he did in fact leave the property. The Tribunal accepted the respondent's evidence that he changed the locks the next day. However, the applicant continued to pay rent for the tenancy even after he had left the property. The respondent accepted the rent and made no deduction to take into account the applicant's moving out from the property.
25. In light of the fact that the parties continued in a contractual relationship until the end of the monthly rental period on 5th June 2022 the Tribunal determined that the end date of the tenancy was 5th June 2022. The Tribunal took into account the actions of the parties, the lack of any clear acceptance by the respondent that the tenancy would end early, his acceptance of rent after 14th May 2022 and the intention stated in the original tenancy agreement that any termination would coincide with the last day of a rental period of the tenancy.
26. Given that the tenancy terminated on 5th June 2022, any application under regulation 9 required to be submitted by 5th September 2022. As the present application was accepted on 30th August 2022 the three month time limit has been complied with and accordingly the action can proceed to a case management discussion to determine the level of any award due under the regulations.
27. The Tribunal adjourned consideration of the application to a later date to determine the level of any award due under the regulations.

Case management discussion "cmd" – 19th June 2023 – teleconference

28. The applicant was in attendance. The respondent was not present or represented. The Tribunal was satisfied that the respondent had been given

proper notice of the cmd and determined to proceed with the cmd in the respondents absence in term of rule 29.

29. The applicant advised that he requested that his tenancy be returned after the tenancy ended on 5th June 2022. The respondent refused to return the deposit and disputed that the applicant was entitled to the deposit due to the condition of the property. The applicant accepted that money could be deducted to cover the cost of a replacement key fob but disputed any further deductions from the deposit as in his view they were due to fair wear and tear. The applicants stated that he sought advice and spoke with Shelter Scotland. This was how he became aware of the tenancy deposit regulations and the duty to place a deposit in a relevant scheme.
30. The applicant explained that he contacted the respondent a number of times,, primarily via email to request return of the deposit. He proposed that if the respondent wished to challenge the amount of the deposit to return then they should attend mediation.
31. The applicant moved away to Stevenage after he left the property. The applicant advised that the loss of the deposit amount did not have a significant financial impact on his ability to find an alternative property. The applicant stated that he found the respondents conduct to be disrespectful to him. The applicant stated that the respondent had returned deposits to previous tenants without quibbling and he was upset at the respondents disrespectful conduct.
32. The applicant stated that he was seeking the maximum award of three months rent i.e £1200. The applicant stated that the respondent had used an invalid English tenancy contract rather than the correct Private Rented Tenancy agreement. The applicant highlighted that to his knowledge the respondent worked in the property industry and should have been aware of his duties to provide a valid tenancy and place the deposit in a relevant scheme.

Findings in fact

33. Parties entered into a tenancy agreement with a commencement date of 5th March 2018.
34. A deposit of £400 was paid to the respondent at the commencement of the tenancy.

35. The tenancy terminated on 5th June 2022.
36. Initially the monthly rent due was £400 however this was reduced to £300 by agreement between the parties.
37. The respondent failed to return the deposit to the applicant at the end of the tenancy period.
38. The respondent had failed to lodge the deposit in a tenancy deposit scheme as required in terms of regulation 3 of the [Tenancy Deposit Schemes \(Scotland\) Regulations 2011/176](#).

Reasons for Decision

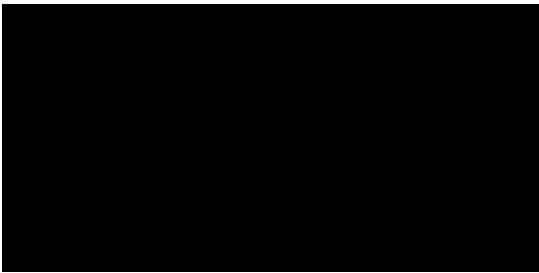
39. The Tribunal took into account the applicant's written and oral submissions, the written submissions of the respondent and his submissions at the previous CMD.
40. The Tribunal was satisfied that the respondent had failed to place the deposit in a suitable tenancy deposit scheme.
41. As set out in paragraphs 17-27 above the Tribunal was satisfied that a tenancy agreement to which the regulations applied had been created. The Tribunal was also satisfied that the present action was raised within three months of the termination of the tenancy. Accordingly, regulation 10 applied.
42. The Tribunal took into account that the deposit had not been returned to the applicant which had led to the applicant entering into protracted correspondence about the issue prior to raising the present application.
43. The Tribunal noted that the tenancy had a duration of over four years during which time the deposit was unprotected. In addition a further year had passed as at the date of the cmd.
44. The Tribunal took into account that the failure to return the deposit had not impacted the applicant's ability to secure further accommodation as he had sufficient means to cover the cost of a further deposit.
45. The Tribunal took into account the respondents failure to attend the cmd without explanation or to put forward any further submissions in respect of the matter.
46. Taking the above factors into consideration the Tribunal determined that the respondent's breach of the regulations was at the more serious end of the scale and in the circumstances an order in the sum of £800 was reasonable.

Decision

The Tribunal determined to grant an order for payment in the sum of EIGHT HUNDRED POUNDS (£800)

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

Date 19th June 2023