



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section Regulation 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”) and Section 44 of the Tribunals (Scotland) Act 2014

Chamber Ref: FTS/HPC/PR/22/3234

Re: Property at 215/6 South Duddingston Park, Edinburgh, EH15 3EJ (“the Property”)

Parties:

Mr Antonio Di Lorenzo, Mr Roberto Di Lorenzo, Yarra Doon Upper, Mainsfield Avenue, Morebattle, Kelso, TD5 8QP; Yarra Doon Upper Flat, Mainsfield Avenue, Morebattle, Kelso, Scottish Borders, TD5 8QP (“the Applicant”)

Mr Raymond Sandison, 48 Crocket Gardens, Penicuik, Midlothian, EH26 9BB (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment be made in the sum of two thousand one hundred pounds (£2100) in favour of the Applicants against the Respondent.

Background

1. An application was submitted dated 2 September 2022 in terms of Rule 103 of the Chamber Rules being an application for an order for payment where landlord has failed to carry out duties in relation to tenancy deposits. Along with the Rule 103 application, the Applicants’ representative also lodged a Rule 111 application being an application for civil proceedings in relation to a private residential tenancy in relation to the return of the original deposit (reference: FTS/HPC/CV/22/3239). Along with the application form, the Applicant lodged a detailed covering letter and copies correspondence between parties. A copy of the private residential tenancy agreement was also lodged.

2. The Tribunal wrote to the Applicant's representative on 9 September 2022 asking for details of the end date of the tenancy and details of the order sought. The Tribunal also sought authorisation for the Applicant's representative to act and asked whether the second tenant intended to be a joint Applicant.
3. The Applicants' representative replied on 14 September confirming that the joint tenant wished to be included as an Applicant and confirming various amendments to both applications. Some photographs and a letter of authorisation for the Applicants' representative to act were also lodged.
4. The application was accepted and assigned to a case management discussion by teleconference on 17 March 2023 to be conjoined with the case management discussion in the related Rule 111 application. In advance of the case management discussion the Applicant's representative emailed the Tribunal to request a hearing by videoconference or in person so that she and her sons could benefit from lip reading. The case management was adjourned to a videoconference case management discussion by Webex today.
5. Written representations and documents including medical evidence relating to the Respondent's wife and photographs were received from the Respondent dated 2 March 2023. The Tribunal wrote to the Respondent advising that evidence to be relied upon required to be copied to the other parties in the application and requested the Respondent to obtain his wife's permission for the medical evidence to be shared or to withdraw the evidence.
6. The Tribunal issued a Notice of Direction dated 17 March 2023 directing the Respondent to lodge a full copy of the medical report in respect of his wife's medical condition should he wish to rely on this, and with the consent of his wife, as the Tribunal had only seen a front page and a photo of part of another page.
7. A further photo of part of a medical report was received by the Tribunal in advance of today's case management discussion.

The Case Management Discussion

8. The case management discussion took place today by Webex. Mrs Di Lorenzo attended as representative for the Applicants. Roberto Di Lorenzo also attended. Antonio Di Lorenzo was unable to attend due to unforeseen work commitments. Mr Sandison attended on his own behalf. There was a delay initially with Mr Sandison's technology which was resolved.
9. The Legal Member explained the purpose of the Case Management Discussion and made reference to the written representations and the application form. The Legal Member noted the matters that had been narrated by the Applicants that were relevant to the Tribunal's determination of the application as:

- a. The tenancy had started on 31 August 2019 despite the application stating that the tenancy had started on 2 August 2019;
 - b. The tenancy had ended on 31 July 2022;
 - c. A deposit had been paid by the Applicants in the sum of £1050 as per Clause 11 of the Private Residential Tenancy Agreement;
 - d. As the tenancy was coming to an end the Applicants discovered that the deposit had not been lodged in a recognised tenancy deposit scheme.
10. The Applicants sought the maximum award in these circumstances, namely three times the amount of the deposit. The Applicant's representative made reference to the Respondents conduct during the course of the tenancy. The Applicants had no idea whether the tenancy deposit was secure. It had never been returned to the Applicants and the separate application conjoined to this is in respect of the repayment of the deposit.
11. The Respondent in both his written representations and oral submissions today admitted that the deposit had not been lodged in a recognised deposit scheme. He had previously used letting agents to manage the Property but decided to take over managing the Property at about the time that this tenancy started. He was to take care of the maintenance etc and his wife would look after the administrative side of things. The failure to pay the deposit into a recognised scheme was an oversight and had been due to the Respondent's wife suffering from Chronic Fatigue Syndrome. A medical report had been lodged from 2013 confirming this. The Tribunal noted that the second page of the medical report which had been lodged in response to a Notice of Direction issued by the Tribunal was not clear and the Respondent read out page two of the medical report. Despite the report being from 2013, the Respondent advised that his wife continued to suffer with problems with her memory. He had one other Property which he had rented out. He was fully aware of his responsibilities in terms of the 2011 Regulations. Once he had found out about the failure to lodge the deposit in a recognised scheme, the Respondent had attempted to lodge the deposit but was advised that he was unable to do so as the Property was now empty and he was looking to sell it.

Findings in Fact

12. The Tribunal made the following findings in fact:
1. The parties entered into a private residential tenancy agreement from 31 August 2019 until 31 July 2022.
 2. The Applicants paid a deposit in the sum of £1050.
 3. The deposit was not paid into a recognised tenancy deposit scheme.

Relevant Legislation

13. The relevant legislation is the Tenancy Deposit Scheme (Scotland) Regulations 2011. These provide:

"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 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 First-tier Tribunal—

(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 First-tier Tribunal 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

14. In reaching its decision, the Tribunal took into account of all the information before it including the paperwork and oral submissions of Parties. The Tribunal considered it had sufficient information upon which to make a proper determination of the application.

15. In addition, the Tribunal took into account the purpose of the 2011 regulations, the deprivation of protection of the deposit, the deprivation of access to the free arbitration service provided by the tenancy deposit schemes which in this case is a live issue due to the dispute over the return of the original deposit, the fact the deposit was unprotected for the whole term of the tenancy which was almost three years, the fact the Respondent had another rental Property and the fact the Applicants required to borrow money for the deposit for their next Property.

16. Balanced against this was the admission of fault on the part of the Respondent and the fact that the breach of the Regulations was not intentional.

Decision

17. In all the circumstances an award of £2100 is appropriate being a sum equivalent to twice 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.

21 April 2023

Legal Member/Chair

Date