



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/22/3259

Re: Property at Flat 16, 367 Argyle Street, Glasgow, G2 8LT (“the Property”)

Parties:

Miss Rosemary Ridley, Miss Lydia Gough, 179 Burgoyne Road, Sheffield, S6 3QD; 1 East View Cottages, London Road, Hartley Wintney, Hook, RG27 8HS (“the Applicants”)

Medical Consultancy Ltd, 15 Heritage Park, St Mellons, Cardiff, CF3 0DP (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be made in favour of the Applicants in the sum of £625.

Background

1. By application received in the period between 6th and 13th September 2022 and made under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”), the Applicants applied for an order in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”).
2. The Applicants lodged a copy of the tenancy agreement between the parties that commenced on 20th August 2020, information from the approved tenancy deposit scheme stating that the tenancy deposit of £1250 paid by the Applicants at the start of the tenancy was lodged on 20th November 2020, end of tenancy information stating the tenancy ended on 10th July 2022, and evidence of payment of the deposit on 17th August 2020.
3. By email dated 23rd November 2022, the Respondent’s Director, Dr Mustafa Yousif Mohamed, lodged written representations setting out mitigating circumstances for the failure to lodge the tenancy deposit in an approved tenancy deposit scheme, and appointing Mr Mohamed Mohamed as his representative.

4. A Case Management Discussion (“CMD”) took place by telephone conference on 8th December 2022.
5. A further CMD took place by telephone conference on 23rd February 2023. The case was continued to a further CMD to take place by telephone conference on 9th May 2023. The matters to be discussed at the CMD were set out as follows:
 - (i) Any mitigating factors to be put forward on behalf of the Respondent for the agreed failure to lodge the tenancy deposit in an approved tenancy deposit scheme, and any response on behalf of the Applicants.
 - (ii) The amount of the award to be made in favour of the Applicants as required by the Regulations.
6. By email dated 18th April 2023, the Applicant, Ms Ridley, requested that the CMD take place by video conference.

The Case Management Discussion

7. A CMD took place by video conference on 9th May 2023. The Applicants were in attendance. The Respondent was not in attendance and was represented by Mr Mohamed Mohamed.
8. The Tribunal heard from Mr Mohamed that the delay in lodging the tenancy deposit was an administrative failure. The Respondent provides medical services to the National Health Service. Dr Mustafa Yousif Mohamed is a consultant physician. The failure to lodge the tenancy deposit took place during the Covid-19 pandemic. This was a time of extreme pressure, where Dr Mohamed was losing colleagues and patients. There was no malicious intent, and the deposit was released to the Applicants as soon as they asked for it to be returned. Responding to questions from the Tribunal, Mr Mohamed said the Respondent has three properties and has been a landlord for 8 or 9 years. This is the first incident where a deposit has not been protected timeously.
9. The Applicants confirmed that the tenancy deposit was lodged 15 working days late. Ms Gough said she is also employed in healthcare and understands the Respondent’s position, however, the Respondent had a responsibility to lodge the deposit timeously. As students with limited funds, this was a large sum of money to be entrusted to the Respondent, and they were entitled to expect the deposit to be lodged as required by the Regulations. The situation has caused the Applicants stress.
10. Mr Mohamed submitted that there was no loss to the Applicants. The deposit was returned when requested. The Respondent is not a bad landlord, and these were extreme circumstances.

11. Before hearing from parties on the level of award to be made, the Tribunal referred parties to the following statement from the Upper Tribunal decision, UTS/AP/19/0020:

'Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals.'

12. The Applicants submitted that the award of the Tribunal ought to be one times the tenancy deposit.

13. Mr Mohamed submitted that the award ought to be a *de minimis* amount, as there was no loss to the Applicants, these were extraordinary circumstances, and none of the circumstances set out in the decision UTS/AP/19/0020 applied in this case.

Findings in Fact and Law

14.

- (i) The parties entered into a private residential tenancy agreement in respect of the Property that commenced on 20th August 2020 and ended on 10th July 2022.
- (ii) A tenancy deposit of £1250 was paid to the Respondent by the Applicants at the commencement of the tenancy.
- (iii) The deposit was not lodged with an approved tenancy deposit scheme within 30 days of the commencement of the tenancy.
- (iv) The deposit was lodged with an approved tenancy deposit scheme on 20th November 2020.
- (v) The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.

Reasons for Decision

15. The Regulations were put in place to ensure compliance with the tenancy deposit scheme, and to provide the benefit of dispute resolution for parties. The Tribunal considers that its discretion in making an award requires to be exercised in the manner set out in the case *Jenson v Fappiano (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015* by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case. The Tribunal must consider the facts of each case appropriately.

16. The Tribunal took guidance from the decision of the Upper Tribunal UTS/AP/19/0020, as set out above. The Tribunal considered this to be a

serious matter, although not one at the most serious end of the scale. The Applicants' deposit was not lodged with an approved tenancy deposit scheme as required by Regulation 3, and remained unprotected for a period of 15 working days.

17. The Tribunal took into account the fact that the tenancy deposit was unprotected for a relatively short period of time, and there was no actual loss to the Applicants. The Tribunal also considered that this was a large sum of money paid out by students, with the expectation that it would be protected as required by law.
18. The Tribunal took into account the Respondent's mitigating circumstances and the considerable pressures caused by the Covid-19 pandemic. The Tribunal took account of the submission that this was the first time the Regulations had not been adhered to by the Respondent, and the fact that there was no attempt to deny responsibility for failing to comply with the Regulations. The Tribunal noted that the deposit was returned at the end of the tenancy.
19. However, the Tribunal considered that the Respondent is an experienced landlord, with three properties, and around nine years' experience of letting. The Applicants were entitled to have confidence that the Respondent would comply with their duties as a landlord.
20. Taking all the circumstances into account, the Tribunal decided it would be fair and just to award a sum of £625 to the Applicants, which equates to half of the deposit.

Decision

21. The Tribunal grants an order against the Respondent for payment to the Applicants of the sum of £625 in terms of Regulation 10(a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

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

9th May 2023
Date