

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for payment where a landlord has not paid the deposit into an approved scheme in terms of Rule 103 of the Procedure Rules.

Chamber Ref: FTS/HPC/PR/22/3723

Re: 4/2, 193 Roxburgh Street, Greenock, PA15 4DA ("the Property")

Parties:

Mr Samuel Meiklem residing at 4/2, 193 Roxburgh Street, Greenock, PA15 4DA ("the Applicant")

Robert Wilson, Trading as Wilson Property Maintenance, 21 Plymouth Avenue, Gourock, PA19 1HT ("the Respondent")

Tribunal Member: Jacqui Taylor (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent should pay the Applicant the sum of £1260 by way of sanction under Regulation 10 1(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011, as amended by the Housing (Scotland) Act 2014 (Consequential Provisions) Order 2017.

1. Background

The Applicant submitted an application to the Tribunal for payment where a landlord has not paid the deposit into an approved scheme in terms of Rule 103 of the Procedure Rules, which application was dated 11th October 2022.

2. Documents lodged with the Tribunal with the Application

Documents lodged with the Tribunal by the Applicant were:

2.1 A copy of the Private Residential Tenancy Agreement between the parties dated 25th September 2019.

2.2 A copy of a faster bank payment confirmation to Robert Wilson on 25th September 2019 of £740.00.

2.3 A copy of the search with My Deposits Scotland which states that the deposit could not be found.

2.4 A copy of the email from Tracy Shapcott of the Letting Protection Service dated 3rd October 2022 which states that Letting Protection Scotland do not hold the deposit.

2.5 A copy of the email from a client adviser at Safe Deposits Scotland dated 3rd October 2022 which states that the property 4/2, 193 Roxburgh Street, Greenock, PA15 4DA is not registered with Safe Deposits Scotland.

2.6 A copy of a text named 'Landlord' dated 10th September which states 'I can't remember you giving a deposit but was obvs prepared to transfer it. It would have only been £320 not £420. Do you have proof you paid £420? I would normally take a months rent in any case but waive it lots of times as tenants can't afford it.'

3. Notice of Acceptance.

By Notice of Acceptance by Josephine Bonnar, Convener of the Tribunal, dated 20th October 2022, she intimated that she had decided to refer the application (which application paperwork comprised documents received between 11th October 2022 and 19th October 2022) to a Tribunal.

4. The Case Management Discussion.

This case called for a conference call Case Management Discussion (CMD) Conference call at 10.00 on 6th January 2023.

The Applicant attended.

The Respondent did not attend and was not represented.

The Respondent had sent emails to the Tribunal administration as follows:

Email dated 12th December 2022 which asked for additional time to lodge written representations as he was unwell.

Email dated 29th December 2022 advising that he was unable to represent himself at present as he was unwell.

The Tribunal Administration sent the Respondent an email dated 4th January 2023 asking the Respondent to clarify if he was seeking a continuation of the CMD and if so to provide a doctor's letter confirming that he is unwell. No response was received to that email.

4.1 Preliminary Matter

The Tribunal clarified with the Applicant that the CMD was only concerned with the question as to whether the deposit had been lodged with the tenancy deposit scheme timeously.

4.2 The Applicant advised the Tribunal as follows:

4.2.1 He continues to reside in the Property. He has a new Landlord and a new lease has been signed. He will provide the Tribunal with a copy of the new lease.

4.2.2 He paid a deposit of £420 to the Respondent on 25th September 2019 and a copy of the bank transfer has been provided. The payment was for £740 which included the first month's rent of £320.

4.2.3 As far as he is aware the Respondent has not forwarded the deposit to the new landlord or their agents. He will obtain confirmation of the position from them.

4.2.4 He acknowledged that he had provided the Tribunal with a copy of a text from the Respondent dated 10th September 2022 and confirmed that he had received additional text messages from the Respondent regarding the deposit and he agreed to provide the Tribunal with copies.

4.2.4 He had no objection to the CMD being continued to enable the Respondent to attend.

4.2.5 The CMD was adjourned to allow the Respondent to provide written representations and attend the adjourned CMD or arrange for representation if he is not in a position to attend himself.

5. Direction

5.1 The Tribunal issued a separate Direction to the Applicant to produce the following documents to the Tribunal:

- (i) Copies of the text messages regarding the deposit between the Applicant and the Respondent after the text message from the Respondent dated 10th September that has been produced.
- (ii) A copy of the fresh lease the Applicant has signed with the new landlord.
- (iii) Confirmation from the new landlord or their agents as to whether they have received the deposit from the Respondent.

5.2 Response to the Direction.

5.2.1 The Applicant provided the required documents to the Tribunal.

5.2.2 The Applicant provided a copy of his new lease. The details of the new lease are as follows:

Landlord: Carveb Properties Ltd

Tenant: Samuel Meiklem

Start Date: 7th September 2022

Property: 4/2, 193 Roxburgh Street, Greenock, PA15 4DA.

Rent: £320 per month

Deposit: £420

5.2.3 The Applicant provided a copy of the email from Morgan, Letting Team, Corbett and Shields to the Applicant dated 11th January 2023 states: 'I have been trying to get a hold of Robert and had no luck. We have still not received any deposit to lodge. Once this is received we will lodge it straight away and you will receive confirmation from Safe Deposit Scotland.'

6. Adjourned Case Management Discussion.

This case called for a conference call Case Management Discussion (CMD) Conference call at 14.00 on 24th February 2023.

The Applicant attended.

The Respondent did not attend and was not represented.

The Tribunal had sent an email dated 11th January 2023 to the Respondent advising him of the Adjourned CMD. The Tribunal were satisfied that the requirements of Tribunal Rule 29 had been satisfied and proceeded with the Continued Case Management Discussion.

6.1 Oral Representations by the Applicant:

Mr Meiklem confirmed that he had provided the Tribunal with copies of text messages dated 19th September 2019 between himself and the Respondent. He confirmed that they were in the following terms:

Text from the Respondent to the Applicant: 'would you have deposit and months rent for then too mate'

Text from the Applicant to the Respondent: 'Yes I was calling to confirm everything as I have handed in my notice this morning.'

Text from the Respondent to the Applicant: 'Yes £740 total on 25th'

He also provided the Tribunal with a copy of text messages starting 6th September 2022 which included a text message from the Respondent to the Applicant in the following terms:

'You come at me with all the legal **** and threats because you think I am trying to rip you off. Paying back the deposit is not an issue. We would need to pay it to them anyway so what is the difference whether I had it now or your new landlord.'

7. Decision.

7.1 The Tribunal made the following findings in fact:

7.1.1 The Applicant, is Tenant of the Property 4/2, 193 Roxburgh Street, Greenock, PA15 4DA and the Respondent was the Landlord of the Property in terms of the lease between them, with the date of entry in terms of the lease being 1st November 2019.

7.1.2 The lease was a Private Residential Tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016.

7.1.3 The Applicant still resides in the Property.

7.1.4 The Respondent sold the property and the Applicant entered into a new tenancy agreement with the new landlords, Carveb Properties Ltd. The commencement date of the new tenancy was 6th September 2022.

7.1.5 The Applicant paid the sum of £740 to the Respondent on 25th September 2019.

7.1.6 The Respondent did not lodge the deposit with My Deposits Scotland. As confirmed by a copy of the search provided by the applicant which states that the deposit could not be found.

7.1.7 The Respondent did not lodge the deposit with Letting Protection Scotland. As confirmed by a copy of the email from Tracy Shapcott of the Letting Protection Service dated 3rd October 2022.

7.1.8 The Respondent did not lodge the deposit with Safe Deposits Scotland. As confirmed by a copy of the email from a client adviser at Safe Deposits Scotland dated 3rd October 2022.

7.1.9 The tenancy between the parties ended on 6th September 2022 when the new lease between the Applicant and the new landlords, Carveb Properties Ltd, began.

7.1.10 The Applicant made the application to the Tribunal on 11th October 2022 which was within three months of the end of the tenancy between the parties on 6th September 2022.

7.1.11 The Respondent has not remitted the deposit to the new landlords Carveb Properties Ltd.

7.2 The relevant sections of the Tenancy Deposit (Scotland) Regulations 2011 ('2011 Regulations'), as amended, provide:

Regulation 3.

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.

Regulation 10

10(1) 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;

7.3 The Tribunal determined that the Respondent had not paid the deposit of £420 to the scheme administrator of an approved tenancy deposit scheme within 30 days of the beginning of the tenancy.

7.4 In assessing the level of sanction the Tribunal considered the applicant's representations.

7.5 The Tribunal considered the following cases:-

7.5.1 Kirk v Singh 2015 SLT Sh Ct 111

In this case the Sheriff considered the whole circumstances and decided that whilst the defender's default could be characterised as serious it was not at the most serious end of the scale and it is also necessary to have regard to the mitigating circumstances advanced by the defender. Accordingly, in his opinion, the fair, proportionate and just sanction in that case, having regard to the maximum sanction available, was £500. The deposit in that case was £380.

7.5.2Cooper v Marriot 2016 SLT (Sh Ct) 99

In this case the respondent was ordered to pay the applicant double the deposit, less £50 representing the estimated damage to a table, by way of sanction for flagrant and wilful disregard of the terms and purpose of the regulations. It was held that landlords who were in such blatant breach could never mitigate their own conduct and failing by reference to the character or conduct of the tenant, and even if it could be considered relevant to the assessment of the sanction, there was no conclusive basis upon which the allegations made could be held to be substantiated. The respondent had to have known of the tenancy deposit scheme where it was mentioned in the tenancy agreement, even though ignorance was not an excuse, and the fact remained that the deposit was held by the respondent, unprotected by the regulations, for two years, as a result of which the applicant had been deprived of his right to invoke the dispute resolution service provided under Pt 6 of the regulations to settle issues about dilapidations at the end of the tenancy; further, the regulations did not recognise the status of amateur landlord but were applicable to all landlords regardless of the scale in which they operated.

7.6 The Tribunal acknowledged that the 2011 Regulations were intended to put a landlord and a tenant on equal footing with regard to any tenancy deposit and to provide a mechanism for resolving any dispute between them with regard to the return of the deposit at the termination of a tenancy.

7.7 The Tribunal in assessing the sanction level has to impose a fair, proportionate and just sanction in the circumstances, always having regard to the purpose of the 2011 Regulations and the gravity of the breach.

7.8 The Tribunal were concerned that the deposit had been unprotected for the duration of the tenancy and the Respondent has still to forward the deposit to the new landlords. The Respondent has not provided any explanation for this failing.

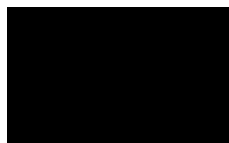
7.9 In the circumstances the Tribunal considers it to be fair, proportionate and just to sanction the Respondent for non-compliance by awarding the Applicant a sum of £1260 being the equivalent of three times the deposit of £420.

7.10 The Tribunal orders the Respondent to pay the Applicant the sum of £1260 by way of sanction under Regulation 10 1(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

8. 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



24th February 2023