



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/22/3740

Re: Property at Flat 3/1, 43 Annette Street, Glasgow, G42 8EH (“the Property”)

Parties:

Mr Jeetesh Garg, Flat 2/02, 2 Southside Crescent, Glasgow, G5 0TQ (“the Applicant”)

Ms Aruna Kumari Metta, 18 Kenton Road, Early, Reading, RG6 7LF (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that there had been a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011, and it would make an order for payment of £4,000 in favour of the Applicant.

Background

1. Two applications were made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for repayment of a deposit and an order due to a breach of the tenancy deposit regulations.

2. The application contained:- a copy of the Tenancy Agreement; a bank statement showing deposit payment; and emails regarding the deposit.
3. The case management discussion was held by telephone conference call on 25 January 2023. The applicant's agent, Ms Colville from Raeside Chisholm took part in the case management discussion. The respondent appeared. Reference is made to the full terms of both case Management Discussion Notes.
4. At the Case Management Discussion, the respondent advised as follows:-
 - a. That she admitted that as of 25 January 2023 the deposit had not been repaid.
 - b. That she had been out of the country in India due to the sudden demise of her mother. This has led to a delay in the repayment of the deposit.
 - c. She had requested that the deposit be returned to the applicant.
 - d. She believed that it would be repaid in the next 1 to 2 weeks.
 - e. She advised that the deposit was secured in a deposit scheme with BPS Deposit Protection Scheme.
 - f. She stated that she had paid the deposit into the scheme in September 2021.
 - g. She referred to there having been some delay in repayment due to the applicant having a 12 month lease and terminating it early.
 - h. She said she had never had an issue before with the repayment of a deposit.
5. The applicant's agent confirmed:-
 - a. That she was seeking an order for repayment of the deposit and a compensatory payment for a breach of the tenancy deposit regulations.
 - b. That no evidence had been lodged by the respondent to support her position.
 - c. That she had not received any evidence that the deposit had been lodged with any of the three approved Scottish Schemes.
 - d. She was not clear about where the deposit is.

- e. It had been 6 months since the tenancy had ended and since the applicant had requested that the deposit be returned.
6. Given the submission by both parties, I continue both cases to a further case management discussion on 17 April 2023, in order for the following matters to be addressed/occur:-
 - a. For the respondent to repay the deposit in the next 14 days to the applicant;
 - b. For the applicant to confirm and provide evidence of any payment of the deposit to the tribunal before the next CMD;
 - c. For the respondent to submit evidence to the tribunal and applicant's agent that the deposit had been lodged with an approved deposit scheme; and
 - d. For the respondent to submit evidence to the tribunal and applicant's agent of the details of the approved deposit scheme that the deposit had been lodged with.
7. I also suggested that the respondent seek professional advice on her rights and duties as a landlord.
8. Since that date, there has been administrative difficulties with sending notification to the Respondent. On around 15 February 2023 postal mail sent to the Respondent was returned advising that "person not at that address". On 17 February 2023 the Housing and Property Chamber emailed the Respondent asking her to confirm that correspondence could be sent to her by email and also, that she confirm her postal address. There was no response to that email. On 9 March 2023 a further attempt to provide notice of today's case management discussion was sent to the respondent. It was unsuccessful. In addition, sheriff officers were also instructed to serve notice of the case management discussion. They attempted to do so on 10 March 2023. They were unsuccessful and in doing so reported back that a female telephoned on receipt of the business card they left at the Respondent's last known address and were advised that the Respondent had left the country around 8 months ago but was unable to supply further information. On 20 March 2023 a further

email was sent to the Respondent making the same request that she provide an up-to-date address and confirm that her email can be used to email correspondence to her. There was no response to that email. In that email the Respondent was advised of the date and time of today's case management discussion and full notification details of today's case management discussion were attached.

9. The case management discussion was held by telephone conference call on 17 April 2023. The applicant's agent, Ms Colville from Raeside Chisholm took part in the case management discussion. The applicant appeared. The respondent failed to appear. Given the terms of the email and the attachment of 20 March 2023 to the Respondent, I consider that the Respondent has received notice of today's case management discussion and I am prepared to proceed in her absence.
10. I also note that there has been no response from the Respondent to confirm that the deposit has been repaid and to provide information about the deposit scheme that she said she had paid the deposit into.

Discussion

11. The applicant's agent confirmed that the deposit had been repaid to the applicant after the case management discussion on 25 January 2023. It was paid back on that date. It was paid by bank transfer. There was no contact by the respondent to the agent or the applicant about repayment or to provide any information about where the deposit had been held since it was paid to her in September 2021.
12. The Applicant's agent advised that they were no longer seeking an order for payment of the deposit. She was still seeking an order for breach of the tenancy deposit regulations.

13. She advised that there had been a breach of regulations as the deposit had not been paid into the scheme within 30 working days of it being paid, and further, no information about the deposit had been provided to the applicant. She stated that it had to be assumed that it had not been put into an approved scheme. She submitted that it was also relevant that the applicant had attempted to get the deposit back and had made numerous calls and emails to the respondent but the respondent had however blocked the applicant.

14. She considered that the breach was serious and she considered that an award of three times should be made. She had lodged authorities with the application which considered factors to be taken into consideration in deciding on the award. She submitted that relevant factors included that it was more serious where there were repeated breaches affecting multiple tenants; if the breach was deliberate or reckless; if it was a high sum; if it had caused loss to the tenants. She noted that this breach involved multiple tenants and it had not been put in an approved scheme and not repaid for over 6 months after the tenancy had ended. She considered the breach deliberate or reckless. It had been unprotected during the whole of the tenancy. It had only been repaid after the case management discussion had taken place and the respondent had been ordered to repay it. She submitted that there was no explanation for the delay. There was no remorse from the landlord.

15. She referred to further case authority where the maximum award had been given due in part to the landlord blocking the tenants and ignoring their requests for repayment. She advised that similar circumstances applied in this case. She was not aware of the circumstances of the landlord. The failure to have the deposit repaid to the applicants had had a detrimental impact on them, for example, it had impacted their ability to pay a new deposit.

Findings in Fact

16. The Tribunal made the following findings in fact:-
17. The Respondent was the landlord. Her address in the lease is 18 Kenton Road, Early, Reading.
18. The Applicant was a co-tenant. There were three other tenants named in the tenancy.
19. The applicant had applied to the tribunal on behalf of and with the consent of his co-tenants.
20. The property was 43 Annette Street, Flat 3/1, Glasgow.
21. Clause 1 of the tenancy stated that it commenced on 1 October 2021.
22. The tenancy was a private residential tenancy.
23. Clause 3 of the tenancy stated that the tenant shall pay a deposit of £2000. It further states that the deposit shall be returned to the tenant subject to possible deduction set out in the agreement.
24. The applicant paid a deposit of £2000.00 to the respondent on 27 September 2021.
25. The respondent failed to register the deposit with an approved tenancy deposit scheme. The respondent had failed to provide prescribed information to the tenants in respect of the deposit.
26. The tenancy ended on around 30 July 2022.
27. The applicant emailed the respondent on 30 July 2022 asking for the deposit to be returned and noting that the flat inspection by the respondent had confirmed that everything was fine with the flat.

28. The applicant emailed the respondent on 21 and 29 August and 5 September (twice) all 2022 asking for the deposit to be repaid. The respondent failed to respond to applicant's emails.
29. The applicant noted in his second email on 5 September 2022 that they had tried to call the respondent, but the applicant's number appears to have been blocked by the respondent.
30. The deposit has not been secured in an approved tenancy deposit scheme.
31. The deposit was repaid to the applicant on 25 January 2023.
32. The application to the tribunal under rule 103 was dated and submitted on 10 October 2022.

Reasons for Decision

33. The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits, and relevant to this case are the following regulations:-

Duties in relation to tenancy deposits

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.

Sanctions

9.— (1) A tenant who has paid a tenancy deposit may apply to the [First-tier Tribunal] 1 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 [...]2 no later than 3 months after the tenancy has ended.

If satisfied that the landlord did not comply with any duty in regulation 3 the [First-tier Tribunal] 1 — (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] 1 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.

34. The Respondent appeared at the first case management discussion. She stated that the deposit had been secured in a deposit protection scheme, and that it would be repaid in 1-2 weeks from the date of case management discussion. Both applications were continued for payment to be made of the deposit and for the respondent to provide evidence of the deposit being paid and details of the scheme it was paid into. The deposit was in fact repaid to the applicant on 25 January 2023, which was the day of the case management discussion. As of 17 April 2023 no evidence has been provided to the tribunal or the applicant about the deposit scheme the respondent alleged that she paid it into.

35. The tenancy commenced in October 2021 and there is evidence of the deposit of £2000 being paid at that time. There was also evidence from the three approved Scottish tenancy deposit schemes that they did not hold the deposit. The respondent did not deny that she had received the deposit. She has now repaid it. She advised that it was with a tenancy deposit scheme, although the name she provided was not recognised by the tribunal or the agent for the applicant. Despite being given the opportunity to provide relevant evidence to support her position, the respondent has failed to prove that the deposit was put into an approved tenancy deposit scheme.

36. Given these facts I find that the deposit was not paid into an approved scheme in accordance with the terms of the regulations and the prescribed information has not been provided to the applicant. Therefore, the terms of regulation 10 are engaged, and the tribunal must order that the Respondent pay the Applicant

an amount not exceeding three times the amount of their tenancy deposit. The amount to be paid requires to be determined according to the circumstances of the case, the more serious the breach of the regulations the greater the penalty.

37. In this case, I consider that a sum of £4,000 would be appropriate.

38. In considering what penalty to impose, I have had regard to the verbal submissions of both parties.

39. I did not find the respondent to be particularly credible or honest in her position as to what had happened to the deposit and why it had not been repaid. Further, she has not provided any evidence to support her claim that the deposit was in a scheme, and the name of the scheme she provided is not a Scottish-approved scheme. I consider it is serious that she appeared to have ignored all requests from the applicant to repay the deposit, ignoring emails and blocking phone calls. It appears clear to me, that had the applicant not brought this matter to the tribunal, the deposit would not have been paid to him.

40. I have little information about the respondent and how long she has been a landlord for and how many properties she rents out, however, these regulations have been in force for a number of years, and the respondent indicated at the previous case management discussion that she had never had an issue with repaying a deposit before. It appeared therefore that she has been a landlord for some time and is aware of, at least, the need to repay a deposit.

41. The applicant advised that it had been of concern to him that the deposit was unprotected throughout the whole of the tenancy, and it had been difficult trying to get it repaid. In addition, he advised that he had needed the deposit in order to use it as a deposit for his next tenancy and therefore the failure to have it paid back had had a detrimental effect on him.

42. In mitigation for the Respondent, she did appear at the first case management discussion, and she did repay the deposit immediately after the case

management discussion, it has therefore now been repaid. However, it does appear to me that the applications to the tribunal were required to obtain this outcome.

43. Weighing up the various factors, the deposit was not protected throughout the whole tenancy. She then refused to engage at all with the tenants after the tenancy had ended about repaying it. There was no evidence that there was any dispute about retaining any of the deposit due to the condition of the property, and in fact, it appears that the respondent had found the flat to be in a satisfactory condition at the end of the tenancy. As noted above, I gained the impression that the respondent had been a landlord for some time, and was aware that the deposit should be in a scheme and that it should be repaid to tenants at the end of a tenancy. Those facts suggest that the landlord was aware of her legal duties but deliberately or recklessly paid little regard to those duties. I have no evidence before me to support any of the reasons that she put forward, as mitigation for her position. I think it is also relevant to note that it was also difficult for the tribunal to contact the respondent after the first case management discussion, which has parallels to the problems that the tenants had at the end of the tenancy.

44. I consider that her actions would have caused at least some anxiety and stress to the applicant and other tenants. I also consider that it was very likely that the deposit would not have been repaid, except for the fact that the tenants had been forced to apply to the tribunal for a payment order.

45. I did not consider the actions of the respondent to be any kind of oversight on her part. She appeared to have failed to lodge the deposit in a scheme and then deliberately ignored the requests of the tenants to repay the deposit to them.

46. While I acknowledge that there are multiple tenants, I have also taken into account that an order of two times the monthly rent will be a fairly significant penalty. I have no evidence before me that the landlord has a history of failing to repay deposits to other tenants. I also note that she now repaid the deposit.

47. I consider that I should therefore impose a penalty which recognises that the deposit was not secured for almost 16 months; not repaid for almost 7 months; and the conduct of the landlord showed a disregard for the terms of the Tenancy Deposit Regulations and rights of the tenants. I consider this to be a serious breach. I consider that a penalty of 2 times the monthly rent would be appropriate in this case.

Decision

48. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that there had been a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011, and it would make an order for payment of £4,000 in favour of the Applicant.

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.

M. Barbour

17 April 2023

Legal Member/Chair

Date