

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/22/2230

Re: Property at 124 Parkhead Drive, Edinburgh, Scotland, EH11 4RX (“the Property”)

Parties:

Mr Alex Cowell, 87 High Garth, Kendal, England, LA9 5NT (“the Applicant”)

Mr Noel John, 41 Fernside Drive, Edinburgh, Scotland, EH14 7HY (“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 granted in favour of the Applicant in the sum of £600.

Background

1. By application received in the period between 7th and 29th July 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 Applicant applied for an order in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”).
2. The Applicant lodged a copy of the tenancy agreement between the parties that commenced on 31st August 2020 and ended on 30th April 2022, correspondence between the parties, and information from the three approved tenancy deposit schemes stating that the tenancy deposit of £450 paid by the Applicant at the start of the tenancy had not been lodged.
3. By email dated 21st August 2022, the Respondent lodged written representations.

The Case Management Discussion

4. A Case Management Discussion ("CMD") took place by telephone conference on 6th October 2022. The Respondent was in attendance. The Applicant was not in attendance initially, but joined the conference after a reminder telephone call from the Tribunal clerk.

The Applicant's position

5. The Applicant said he was seeking compensation for the Respondent failing to lodge his deposit in a tenancy deposit scheme. He had been unaware of the scheme until he moved out of the Property.
6. Responding to questions from the Tribunal regarding the level of order sought, the Applicant said he was seeking two times the tenancy deposit, because the Respondent had been threatening towards him in text messages regarding the return of the deposit, which was the subject of another case before the Tribunal on the same day. The perceived threat involved a reference to the Respondent's lawyer. The Applicant confirmed the Respondent had now returned the deposit.

The Respondent's position

7. The Respondent said he was a first-time landlord when he took over the Property from his parents three years ago. Although he had provided a tenancy agreement purporting to be an assured tenancy, he was now aware this was incorrect, and the tenancy was a private residential tenancy. At the time, there was no end date to the tenancy and he thought the Applicant was only staying a short time. He was unaware of the Regulations and the need to lodge the deposit. He said the Applicant was like a family member to the Respondent and his wife and they looked after him when he had Covid.
8. The Respondent said he had no intention to keep the deposit, but the Applicant left without giving the full notice and they did not meet up. The Applicant's responses to messages were brief, the keys were not returned and he left some belongings. The Respondent said if the Applicant had returned for his belongings, he would have returned the deposit then.
9. The Respondent has no other properties. He has never let property before. He is now doing some work on the Property and a letting agent will be taking over management of the Property from January 2022. He is now aware of his responsibilities. The Respondent apologised to the Applicant and the Tribunal for his mistake, saying he and his wife had worked hard looking after the Property, and he was now holding up his hands to his mistake.
10. Responding to questions from the Tribunal as to the amount of any order awarded, the Respondent said he was content to leave it to the discretion of the Tribunal, stating that he had now learned his lesson. He denied there was any threatening correspondence sent to the Applicant.

Findings in Fact and Law

11.
 - (i) The parties entered into a tenancy agreement in respect of the Property that commenced on 31st August 2020 and ended on 30th April 2022.
 - (ii) A tenancy deposit of £450 was paid to the Respondent by the Applicant 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 remained unprotected throughout the duration of the tenancy.
 - (v) The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.

Reasons for Decision

12. The Applicant's deposit was not lodged with an approved tenancy deposit scheme as required by Regulation 3. The deposit remained unprotected throughout the duration of the tenancy, which was one year and eight months.
13. 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.
14. The Tribunal took guidance from the decision of the Upper Tribunal UTS/AP/19/0020 which states: '*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.*'
15. The Tribunal considered this to be a serious matter, although not one at the most serious end of the scale. The Tribunal took into account that the deposit was unprotected throughout the duration of the tenancy. Although the Respondent claimed that he would have returned the deposit timeously had the tenancy ended differently, it was clear from the messages exchanged between the parties that there was some level of dispute over the state of the Property and that, had the deposit been lodged with an approved tenancy

deposit scheme, both parties would have had the benefit of the adjudication service provided by such schemes.

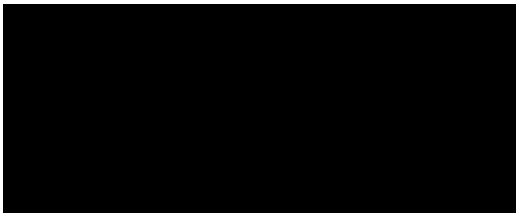
16. The Tribunal considered the Respondent's mitigating circumstances, in that he was a first-time and inexperienced landlord. However, ignorance of the law is no defence, and the Tribunal considered that he ought to have investigated his responsibilities fully at the time of becoming a landlord, to ensure that he complied with the law.
17. The Tribunal noted there was no attempt by the Respondent to deny responsibility for failing to comply with the Regulations. The Respondent had apologised, claimed to have learned his lesson, and was now appointing a letting agent for future tenancies.
18. The Tribunal did not consider the text message from the Respondent mentioning his lawyer's involvement and asking for contact details to be threatening.
19. Taking all the circumstances into account, the Tribunal decided it would be fair and just to award a sum of £600 to the Applicant.

Decision

20. The Tribunal grants an order against the Respondent for payment to the Applicant of the sum of £600 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

6th October 2022
Date