



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 3 and 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/23/0524

Re: Property at 3/1 (or Flat 27) 318 Albert Drive, Glasgow, G41 5EB (“the Property”)

Parties:

Mr Konstantinos SILIKOGLU, 2/3 712 Dumbarton Road, Glasgow, G11 6RB (“the Applicant”)

Mrs Rhona Allanach, Dunallan, St Evox, St Quivox, Ayr, KA6 5HJ (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of £599 be made.

Background

On 20th February 2023 the Applicant lodged under Rule 103 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) seeking a sum under the Tenancy Deposit (Scotland) Regulations 2011.

Lodged in support of the application were several documents. including:

1. The written agreement between the parties dated 10th December 2020 and headed “Accommodation Agreement for double room” with a rent of £599 per month and commencing on 7th January 2021 for 6 months
2. Notice given by the Applicant to the Respondent dated 2nd January 2023 confirming he would be leaving on 6th February 2023

3. Emails between the parties dated 2nd and 3rd January 2021 showing that a deposit of £599 was paid
4. Evidence from each of the three tenancy deposit schemes confirming that the deposit had not been lodged with them

The Application was served on the Respondent by Sheriff Officer.

The Respondent sent an email to the Tribunal on 28th March 2023 outlining her position. She said that the agreement was a lodging agreement, and that she had wanted to rent out a room in her home and not the whole property. She said that she had made enquiries with Glasgow City Council before doing so and produced an email from them. The date of that email could not be seen on the document produced. She also stated that the Applicant had received return of his deposit within a day of moving out. She also lodged a statement which provided some more information. She said that the flat at 318 Albert Drive was bought to be used approximately 4/5 days per week by herself and her family for work and for leisure. She said that due to the covid pandemic it became empty for the best part of 2020 due to lockdown restrictions. The costs of an empty flat were accumulating and selling was not an option due to the pandemic. She said that in December 2020 when things began to open up she decided to offer a room to someone as a lodger, to share her home. She said that she believed in sharing and hosting folk to help them establish roots to find a more permanent residence. She said that she also had health issues which prevented her from mixing and isolation was necessary. She said that as a result of these factors the Applicant lived there without her or her family being able to use the flat. She said that she thought about selling but felt bad about asking the Applicant to relocate. She said that she let things be in the hope that things could return to normal. She said she was doing her best to give somebody a home in difficult times.

In her statement the Respondent said that Glasgow City Council had told her a few years ago that if she had Airbnb guests or a lodger she did not require to be registered as a landlord, and it was her understanding from more recent contact that this still applies. She also said that she had considered offering the property as a proper rental with an estate agent managing it. She said however that the Applicant would not agree to it.

The Tribunal thereafter received an email from the Applicant answering the Respondent's submission, and thereafter a series of emails from the parties in response to each other's emails. Most of these emails were entirely unnecessary, and mainly critical of each other, and not part of the Tribunal's process. The information could all have been gathered at the Case Management Discussion.

The Respondent did lodge a statement from her partner, Colin Hyslop, which confirmed that it was made clear to the Applicant that he was being offered a lodging agreement. Mr Hyslop stated that the intention of the Respondent was to use the flat on a Sunday through to a Wednesday and at the weekends, from time to time.

Case Management Discussion

The Case Management Discussion (“CMD”) took place by teleconference. The parties both dialled in and represented themselves.

The Chairperson made introductions and explained the purpose of a CMD in terms of Rule 17 of the Tribunal’s Rules.

The Chairperson confirmed with the Applicant that his case was that the tenancy deposit paid by him should have been placed in a tenancy deposit scheme in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. He agreed.

The Chairperson established from the parties that they agreed that the occupation of the property by the Applicant commenced on 7th January 2021 and ended on 6th February 2023, a deposit of £599 was paid by the Applicant to the Respondent, the deposit was returned by the Respondent to the Applicant when the Applicant left the property, and that the deposit had not been placed in a scheme.

The Applicant’s case was straightforward. He did not require to say anything over and above what was in his application.

The Respondent was asked for her position.

The Respondent said that the flat at Albert Drive was her home in Glasgow. She has another home in Ayrshire. She said that prior to the pandemic she spent more time in the Glasgow flat than in the Ayrshire house. She only intended to rent out a room in the Glasgow flat. She said that during the pandemic she wanted to offer a home to someone. The Chairperson commented that she accepted rent, and it was therefore a commercial venture, not offering someone a home. The Respondent did not seem to understand the point the Chairperson was making.

The Respondent said that the Applicant knew what the arrangement was and what type of agreement he was entering in to. She said that when he took occupation no one was sure how the pandemic would progress and what the rules would be. When he took occupation no one else was living in the flat with him. The intention was that the Respondent and/or members of her family would live there for around four days per week. The Respondent said that she chose to be in the Ayr property due to the pandemic and her illness.

The Respondent said that she had sought the advice of Glasgow City Council and made reference to the email from them that she had lodged. The Chairperson noted that she had not lodged a copy of the email she sent to the Council initially, so the Tribunal could not see what information the advice given by the Council had been based on. The Respondent said that she had asked about taking a lodger in to her home.

The Chairperson asked the Respondent which property she considered to be her main residence. She considered them both to be her home. The Chairperson ascertained from her that she was registered to vote in Ayrshire and that the doctor and dentist

she was registered with were in Ayr. She said that she would not have changed doctor due to the medical treatment she was receiving and was also unlikely to have changed dentist. She said that prior to the pandemic she spent most of her time in the Glasgow property but due to the pandemic, for reasons previously explained she had to live in the Ayr property full time. She said that she had started out with the best intentions but during the pandemic was not allowed to mix with anyone.

The Chairperson considered that she had sufficient information to allow her to make a decision without having to continue the matter to a hearing. Both parties confirmed that they were content with that and had nothing further to add. The CMD was adjourned to allow the Chairperson to issue a written decision.

Findings In Fact

1. The parties entered in to an Agreement for the Applicant to occupy a room in the Respondent's property;
2. The Agreement was headed "Accommodation Agreement for a double room";
3. The period of occupation was from 7th January 2021 until 6th February 2023;
4. The Applicant paid the Respondent a deposit of £599;
5. The deposit was returned to the Applicant in full when he vacated the property;
6. The Respondent did not occupy the property at the time that the Applicant's occupation of the property began;
7. The Respondent did not occupy the property at all during the time that the Applicant occupied the property;
8. Prior to entering in to the Agreement the Respondent did not occupy the property on a full time basis;
9. The Respondent owns a house in Ayr;
10. At the time the Applicant took occupancy of the property in Glasgow, and throughout his occupation, the Respondent lived in her property in Ayr;
11. The property in Ayr is the Respondent's principal home.

Reasons For Decision

The decision in this case is a straightforward matter of applying the law to the facts. The Tribunal had no reason to doubt anything which the Respondent said but intentions, no matter how well founded, do not influence the facts or the application of the law to those facts.

Section 1 of the Private Housing (Tenancies)(Scotland) Act 2016 defines a private residential tenancy as follows:

1. Meaning of private residential tenancy

(1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant’s only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

Paragraphs 7 to 10 of Schedule 1 to the Act provide exceptions, and deal with resident landlords in paragraphs 7 to 10 as follows:

Resident landlord

7 A tenancy cannot be a private residential tenancy if paragraph 8 or 9 applies to it.

8 This paragraph applies to a tenancy if—

(a) the let property would not be regarded as a separate dwelling were it not for the terms of the tenancy entitling the tenant to use property in common with another person (“shared accommodation”), and

(b) from the time the tenancy was granted, the person (or one of the persons) in common with whom the tenant has a right to use the shared accommodation is a person who—

(i) has the interest of the landlord under the tenancy, and

(ii) has a right to use the shared accommodation in the course of occupying that person’s home.

9(1) This paragraph applies to a tenancy if sub-paragraphs (2) and (3) apply to it.

(2) This sub-paragraph applies to a tenancy if, from the time it was granted, a dwelling within the same building as the let property has been occupied as the only or principal home of a person who, at the time of occupying it, has the interest of the landlord under the tenancy.

(3) This sub-paragraph applies to a tenancy if, at the time it was granted, there was an ordinary means of access—

(a) through the let property to the dwelling occupied by the person who is, or is to be, the landlord, or

(b) through the dwelling occupied by the person who is, or is to be, the landlord to the let property (whether or not that access was available to the tenant as of right).

(4) For the purpose of this paragraph, in determining whether a dwelling is occupied as the only or principal home of the person having the interest of the landlord, no account is to be taken of—

(a) any period beginning with the date on which the interest of the landlord is transferred (other than on death) and ending—

(i) 28 days later, or

(ii) 6 months later if, within 28 days of the period beginning, the person to whom the interest is transferred notifies the tenant of the person's intention to occupy a dwelling within the same building as the let property,

(b) any period of up to 24 months beginning with the date of the person's death and ending with the person's interest in the tenancy being vested in another person (otherwise than as the person's executor).

10 If, at any time, the landlord holds the landlord's interest as a trustee under a trust, a reference in paragraph 8 or 9 to a landlord or the person having the interest of the landlord includes a person who is a beneficiary under the trust.

11 In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in paragraphs 8 to 10 are to any one of those persons.

The Respondent did not occupy the property at any time that the Applicant lived there, and the tenancy does not therefore fall within this exemption. This is in terms of Paragraph 9(2) above.

It must also be said that even if the Respondent had occupied the property in Glasgow for several days per week as was her stated intention, The Tribunal would still not have been satisfied that the exemption would have applied. Regulation 9(2) refers to the occupation by the resident landlord as occupation as his only or principal home. The Respondent's principal home was in Ayr.

In terms of the Act writing is not required to constitute a tenancy and, if there is nothing in writing, in terms of section 7 of the Act the statutory terms of a Private Residential Tenancy in are implied.

It follows that as the Agreement between the parties is a private residential tenancy agreement, the Tenancy Deposit Scheme (Scotland) Regulations 2011 apply.

Regulation 3 states:

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.

The Respondent should have complied with the Regulation and place the deposit in an approved scheme.

Regulation 10 states that

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.

The Tribunal has discretion in deciding what the Respondent should be ordered to pay. Serial offenders, i.e. landlords with multiple properties who do not place deposits in schemes are at the upper end of the scale. The current case is not at the upper end of the scale. However, there is still a breach of the Regulations. Renting out a property

is a commercial decision and there are laws and regulations in place to protect parties who enter in to tenancy agreements. These must be complied with.

It was clear from what the Respondent said that she thought that she was doing the Applicant some kind of favour, rather than entering in to a commercial arrangement where she benefitted by receiving rent. The Tribunal accepted that she had checked with the local authority before proceeding, but it seems that she gave them information based on her own misunderstanding of the law. If she had explained to them that she lived between the two properties it is likely that their advice would have been different.

The Respondent also said several times that the Applicant knew what the arrangement was. As she is the landlord, entering in to a commercial arrangement it is for her to determine the type of contract required in terms of the law. It is not the responsibility of the tenant.

The reasons for the Regulations are to protect the tenant's deposit, as the money belongs to the tenant, and also to provide a fair and impartial mechanism for adjudicating on whether a deposit should be returned to a tenant or some or all be retained by the landlord. The Respondent did however return the deposit to the Applicant in full at the end of the term.

The Tribunal has power to award a sum equivalent to up to three times the amount of the deposit.

In all the circumstances the Tribunal has decided to order the Respondent to pay to the Applicant the sum £599.

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.

A Kelly

4 May 2023

Legal Member/Chair

Date

