



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 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/22/2822

Re: Property at 8 Lomond View, Drongan, KA6 7BS (“the Property”)

Parties:

Mr Jeffrey Halley, Ms Julieanne Halley (previously Roberts), Suite 216, 4 Fullarton Street, Ayr, KA7 1UB (“the Applicants”)

Ms Donna Riley, 8 Lomond View, Drongan, KA6 7BS (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of £1200.00 be made in favour of the Applicants.

1. Background

- 1.1 This is an application under rule 103 of the Chamber Rules whereby the Applicants seek an order for payment of three times a deposit paid in terms of a private residential tenancy between the parties due to an alleged breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
- 1.2 The application was accompanied by copies of the written tenancy agreement between the parties, emails between the parties and an email from the Letting Protection Service Scotland, confirming the date upon which the deposit was lodged.
- 1.3 The Respondent had lodged written representations accompanied by copies of text messages between the parties. An earlier request by the Respondent for a postponement of an earlier Case Management Discussion had been granted.

2. The Case Management Discussion

- 2.1 The Case Management Discussion took place on 21 November 2022 by teleconference. Both Applicants were personally present as was the Respondent.
- 2.2 The Tribunal heard firstly from the Applicants. They confirmed that the tenancy commenced on 1 October 2018. A deposit of £1200.00 was paid in connection with the tenancy. As far as the Applicants were aware, the Respondent would comply with any obligations in respect of the deposit. They were unaware of those obligations until receiving advice from Shelter Scotland after receiving notice from the Respondent to end the tenancy. They discovered that the deposit was not lodged with any appropriate scheme, nor was the Respondent registered as a landlord and notified her of the breach of obligations. The deposit was then lodged. The tenancy agreement had come to an end as of the end of May 2022. Thereafter, the deposit had been retained by the Respondent following a dispute over unpaid rent. Letting Protection Service Scotland had authorised it to be retained by the Respondent. The Applicants had had an opportunity to make representations regarding this. The Applicants did not believe it was their responsibility to make the Respondent aware of her obligations in respect of the deposit. They had no strong view as to whether this application should be conjoined with another application lodged by the Respondent, but not yet accepted by the Tribunal.
- 2.3 The Respondent confirmed that the tenancy had commenced in October 2018 albeit the Applicants had been permitted early access to the property. The deposit of £1200.00 had been taken. The tenancy agreement between the parties was her sole experience of acting as a landlord. She and her family had previously resided at the property and had required to relocate to Wales due to her employment. She had not taken any advice from a solicitor, letting agent or any other resources available prior to the tenancy commencing. On reflection, the Applicant conceded that she ought to have taken such advice. Upon being notified by the Applicants of the apparent breach of her obligations, she took the necessary steps to lodge the deposit and register as a landlord. A dispute over unpaid rent had arisen and dealt with by Letting Protection Service Scotland. The outstanding application lodged with the Tribunal concerned alleged damage by the Applicants to the property. Further information had been requested by the Tribunal. The Respondent characterised herself as a good landlord with a good relationship with the Applicants until the tenancy was to end, with rent relief being provided during the pandemic. The Applicants had not taken any steps to notify her of the failure to lodge the deposit. The deposit had been held in a bank account until lodged with Letting Protection Service Scotland.

3. Findings in Fact

- 3.1 The parties entered into a private residential tenancy agreement which commenced on 1 October 2018. At the commencement of the tenancy, the Applicants paid a deposit of £1200.00 to the Respondent.

- 3.2 The deposit was lodged with Letting Protection Service Scotland on 27 May 2021.
- 3.3 The deposit was unprotected from the commencement of the tenancy until 27 May 2021, having been held by the Respondent in a bank account.
- 3.4 The Respondent lodged the deposit with Letting Protection Service Scotland upon being notified by the Applicants of her obligations.
- 3.5 The Respondent requested that Letting Protection Service Scotland release the deposit to her at the end of the tenancy. The Applicants had the opportunity to make representations to Letting Protection Service Scotland with regards to the release of the deposit.
- 3.6 The tenancy agreement between the parties was the only experience of the Respondent of acting as a landlord.
- 3.7 The Respondent took no advice as to her obligations as a landlord in respect of tenancy deposits prior to the tenancy commencing.

4. Reasons For Decision

- 4.1 At the Case Management Discussion, the Tribunal heard parties' submissions on their respective positions. From this, the Tribunal was able to establish certain uncontroversial facts, listed at section 3 of this decision, and considered that no hearing was needed to determine the application.
- 4.2 Regulation 3 of the 2011 Regulations is as follows:-

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](#).

[

(1A) Paragraph (1) does not apply—

(a) where the tenancy comes to an end by virtue of [section 48](#) or [50](#) of the [Private Housing \(Tenancies\) \(Scotland\) Act 2016](#), and

(b) the full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord, within 30 working days of the beginning of the tenancy.

[\]1](#)

(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.

[

(2A) Where the landlord and the tenant agree that the tenancy deposit is to be paid in instalments, paragraphs (1) and (2) apply as if—
(a) the references to deposit were to each instalment of the deposit, and
(b) the reference to the beginning of the tenancy were to the date when any instalment of the deposit is received by the landlord.

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(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.

It was accepted by the Respondent that she was under an obligation to lodge the deposit with an approved scheme. It was not in dispute that the deposit has not been lodged with such a scheme until 27 May 2021, by which time the deadline for doing so had long passed.

4.3 Regulation 10 of the 2011 Regulations is as follows:-

10.

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](#).

The Tribunal was satisfied that the Respondent had failed to comply with her duties in terms of the tenancy deposit. In those circumstances, the Tribunal was required to make an order, not exceeding three times the amount of the deposit, in favour of the Applicants.

4.4 There are no factors prescribed by the 2011 Regulations that the Tribunal to which the Tribunal requires to attach particular weight when selecting the amount appropriate in the circumstances. The Tribunal accepted that the Respondent was not a “professional” landlord. The tenancy between the parties was her only venture into property letting. She had taken steps to address the breach of duty as soon as she became aware of it. The deposit was protected for the remaining twelve months of the tenancy agreement and the Applicants had the benefit of Letting Protection Service Scotland when in dispute over the retention of the deposit.

4.5 Notwithstanding this, the deposit was not an insignificant sum. It went unprotected for in excess of 30 months. It was not incumbent on the Applicants to notify the Respondent of her duties. She had failed to take

any advice prior to the commencement of the tenancy agreement to ensure that she could comply with those duties. In all the circumstances, the Tribunal deemed the amount of the original deposit to represent the severity of the breach of duties on the part of the Respondent.

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.

Alastair Houston

Legal Member/Chair

21 November 2022
Date