

**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 (Regulations)**

Chamber Ref: FTS/HPC/PR/20/1209

**Re: Property at 2 Cummings Park Drive, Northfield, Aberdeen, AB16 7BN (“the
Property”)**

Parties:

Miss Chelsea Burrow, c/o 38 Kings Road, Tranent (“the Applicant”)

**Mr Jake Pottinger, 2 Cummings Park Drive, Northfield, Aberdeen, AB16 7BN
 (“the Respondent”)**

Tribunal Members:

Alan Strain (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application be refused.**

Background

This is an application under Regulation 9 of the Regulations and Rule 103 of ***The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Rules)*** in respect of an alleged failure to protect a tenancy deposit.

The Tribunal had regard to the following documents:

1. Application received 27 May 2020;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 18 September 2019;
3. Photographs, screenshots and correspondence between the Parties and Shelter;
4. Written Representations from Respondent dated 14 August 19 October 2020;
5. Written Representations from Applicant dated 18 August and 12 October 2020.

The case had called for a Case Management Discussion (CMD) at which the following facts had been agreed:

1. The Parties entered into the PRTA commencing 18 September 2019;
2. The Applicant paid a deposit of £350 to the Respondent a few days after commencement;
3. The deposit was not protected in a relevant Scheme and is still held by the Respondent;
4. The PRTA terminated on 28 February 2020.

The following issues would be determined at the Hearing:

1. Whether the tenancy was a relevant tenancy in terms of which the deposit required to be protected?
2. If it was a relevant tenancy what sanction (if any) should be imposed on the Respondent for failing to protect the tenancy deposit.

Hearing

The Hearing proceeded by conference call in light of the current situation.

The Applicant did not participate but was represented by her mother. The Respondent participated and was unrepresented.

The Tribunal informed Parties that the only matters for consideration were those relating to Rule 103 and whether or not there had been a failure to protect a tenancy deposit under the Regulations.

The Tribunal then identified the relevant documents and productions. The Tribunal also set out the procedure to be followed to the Parties during the course of the Hearing.

Given the substantial written representations and submissions that had been lodged both Parties agreed that their main evidence was in the submissions and that they would then be questioned by the Tribunal and cross examined by the other Party. They would then get the opportunity to make submissions.

The Tribunal then heard from Ms Burrows. She confirmed that the Applicant was not going to attend and give evidence on her behalf. Ms Burrows spoke to the written representations and documents that had been lodged in advance of the Hearing.

The Tribunal then asked her questions during the course of which she confirmed the terms of the PRTA that had been entered into and the modifications of the various clauses. She had not seen the PRTA until after the Applicant had entered into it. She did not see the Respondent during her visits to the Property apart from at the outset when he was present. Since then the Respondent has not lived at the Property. If he had done then the Applicant would have been aware.

The Respondent's room was adjacent to the Applicant's. There was a shared bathroom and kitchen. The Respondent's room only had a blow-up bed and had been used for storage.

She confirmed that the Applicant did not pay directly towards council tax, broadband or utilities. These were included in her rent. The Respondent was responsible for paying these.

She confirmed the understanding that the Applicant had entered an agreement whereby she rented a room in shared accommodation, where it was stated that the Respondent would be residing there. The reality was that the Respondent did not reside there.

The Respondent cross-examined Ms Burrows.

The Respondent then gave evidence on his own behalf.

The Respondent's position was that the deposit was not protected as he had let the Applicant a room only in his Property. He had used the wrong type of agreement. She was his lodger and the Property remained his sole or main residence. He did not require to be registered as a landlord and the deposit did not require to be protected under the Regulations.

He confirmed that he paid the Council Tax, Broadband and all utility bills for the Property. He had informed the Council that he was letting rooms in the Property and no longer eligible for single occupancy discount on the Council Tax. He had also informed his mortgage provider what he was doing and had secured their consent.

He lived at the Property 3 to 4 nights per week. He confirmed his room was adjacent to the Applicant's and that he used the shared bathroom and kitchen when he was there. He could not understand why the Applicant would have been unaware of his presence during the week and this is part of an agenda against him.

He had never let any Property before. The other lodger remained in the Property.

Ms Burrows questioned the Respondent.

Having concluded the evidence both Parties then summed up.

Decision and Reasons

The Tribunal made the following findings in fact after considering the oral and documentary evidence produced by the Parties:

1. The Parties entered into the PRTA commencing 18 September 2019;
2. The PRTA provided that the let was "room only"; the Respondent's main residence; there were shared facilities and that the rent included utilities, council tax and broadband.
3. The Applicant paid a deposit of £350 to the Respondent a few days after commencement;

4. The deposit was not protected in a relevant Scheme and is still held by the Respondent;
5. The Respondent did not physically stay at the Property for the majority of the Applicant's time there. He lived with his Partner in Aberdeenshire;
6. The Respondent was responsible for and paid the council tax, utility and broadband bills for the Property;
7. The PRTA terminated on 28 February 2020.

The Tribunal had regard to the terms of the PRTA entered into between the Parties. It specified at Clause 4 that it was "room only". It further specified at Clause 2 that the Respondent's main residence was at the Property. It also stated that the rental payment made by the Applicant included utilities, council tax and broadband.

It was the Applicant's understanding that she was entering into an agreement to rent a room with shared facilities in the Property. It was also her understanding that the Respondent would be living there.

Whilst the Tribunal did not accept the Respondent's evidence that he was living in the Property 3 to 4 days per week that finding in itself is not determinative of the issue.

The Tribunal considered the relevant legislation starting with the Regulations.

The Regulations apply to a relevant tenancy. Regulation 3 provides:

(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 reference above to the 2004 Act is a reference to the ***Antisocial Behaviour etc. (Scotland) Act 2004*** which provides at section 83(6):

(6) For the purposes of subsection (1)(b), the use of a house as a dwelling shall be disregarded if—

(e) the house is the only or main residence of the relevant person;

This means that where a house is the sole or main residence of the landlord then the tenancy is not a relevant tenancy for the purposes of the Regulations. Any deposit taken would not then require to be protected.

The Tribunal find that despite the fact that the Respondent was not physically living in the Property 3 to 4 nights per week, the Property was in fact and law his main residence.

Furthermore, the Applicant had been informed in advance and agreed in writing to a PRTA which made it clear that the Respondent would be living there, was for the rental of a room only and shared facilities. The PRTA also stated what would happen with the deposit.

In all the circumstances of the case the Tribunal find that this was not a “relevant tenancy” for the purposes of the Regulations. As such there was no legal obligation upon the Respondent to comply with the requirement to protect the tenancy deposit.

Outcome

- Application refused

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.

Alan Strain
Legal Member/Chair

20 October 2020

Date