

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/20/2346

Re: Property at 173 Low Waters Road, Hamilton, ML3 7QQ (“the Property”)

Parties:

Miss Lorraine Lamey, 173 Low Waters Road, Hamilton, ML3 7QQ (“the Applicant”)

Mr Christopher Winsborough, 3/9 Gipps Ave, Mordialloc, Victoria 3195, Australia (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member)
Lori Charles (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £700 should be made in favour of the Applicant.

Background

1. By application dated 3 November 2020, the Applicant seeks an order in terms of Regulation 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). A tenancy agreement, bank statement and emails from Safe Deposits Scotland, Letting Protection Service and My Deposit Scotland were lodged in support of the application.
2. The Tribunal served a copy of the application of the Respondent. The application called for a CMD at 2pm on 15 January 2021 by telephone conference call. The Applicant participated and was represented by Ms Young. The Respondent was represented by Mr McGlone. A related application under Chamber reference RP/20/2344 (“the repairing standard case”) also called for a CMD. Mr McGlone advised the Legal Member that he although he represented the Respondent in connection with both matters, he had only been

aware of the CMD for the repairing standard case and did not have a copy of the papers for the application. The Legal Member noted that the application had been served on the Respondent at his address in Australia and had only been delivered to him on 4 January 2021, although sent on 4 December 2020. Mr McGlone advised the Legal Member that the deposit had not been secured in a scheme at the start of the tenancy but had been lodged with Safe Deposit Scotland (“SDS”) in the last few days.

3. Following discussion with the parties, the Legal Member determined that the CMD should be continued to allow Mr McGlone the opportunity to obtain a copy of the application and supporting papers from the Respondent and discuss the application with him, so that he could properly represent the Respondent at the CMD, and for the Respondent to obtain and lodge a copy of the certificate from SDS confirming that the deposit has now been secured. The parties were notified that a further CMD would take place by telephone conference call on 8 March 2021 at 10am, to call at the same time as the repairing standard case. Prior to the CMD the Applicant lodged a certificate from SDS which confirmed that the deposit of £350 had been lodged on 19 January 2021. On 5 March 2021, Mr McGlone submitted a letter of authority from the Respondent authorising Mr McGlone to represent him.
4. A further CMD took place on 8 March 2021. Mr McGlone participated on behalf of the Respondent but advised that he still did not have a set of papers or instructions. The Tribunal arranged for a set of papers to be sent to him and decided that the CMD would again be continued to allow him to consider the papers and discuss these with the Respondent. The parties were notified that a further CMD would take place on 30 April 2021 by telephone conference call.
5. The application called for a CMD on 30 April 2021 at 10am. The Applicant participated and was represented by Ms Young. Neither the Respondent nor Mr McGlone participated. Neither contacted the Tribunal in advance of the CMD or lodged written representations.

The CMD

6. From the application form, the documents lodged in support of the application, the Safe Deposits Scotland certificate lodged by the Applicant prior to the second CMD and the information provided by the parties at the CMD the Tribunal noted the following: -
 - (i) The tenancy started on 3 August 2019 and is continuing.
 - (ii) The Applicant paid a deposit of £350 on 5 August 2019. This was paid to the Respondent’s representative, Mr McGlone, with the first month’s rent.
 - (iii) The deposit of £350 was not lodged in an approved tenancy deposit scheme until 19 January 2021.

7. Ms Young advised the Tribunal that the Applicants seeks the maximum award. She pointed out that the Respondent has provided no information to suggest that a lower award is appropriate. She highlighted that landlords must ensure that they are aware of their legal obligations and that they fulfil these. In response to questions from the Tribunal she advised that the Applicant had sought advice from her in relation to repairs issues at the property and the tenancy deposit. She had been aware of the requirement to secure the deposit and had become concerned that this may not have taken place. She had lost trust in Mr McGlone because of his failure to address repairs issues at the property. She was worried that, if the deposit was not secured, it may not be returned to her. This might limit her options should she want to move.
8. Ms Lamey advised the Tribunal that she had lived near to the property when she first moved to Hamilton in 2014. It was unoccupied at that time. After she became the tenant, in August 2019, a neighbour confirmed that it had been empty for a number of years. At that time, Ms Lamey thought that Mr McGlone was the owner and landlord. His name was on the tenancy agreement. She made enquiries before she moved in with landlord registration and discovered the property was not registered. She mentioned this to Mr McGlone. He then attempted to register the property in his own name, rather than the Respondent's name. In November 2019, a rent penalty notice was issued due to the failure by the Respondent to register. This was later revoked when the property was correctly registered. Ms Lamey said that she thinks that Mr McGlone has a number of rented properties himself, but she does not know if the Respondent is also an experienced landlord or otherwise. She has no knowledge of previous tenants at the property, as it was apparently unoccupied for several years. Her only contact with the landlord has been by email as Mr McGlone has dealt with everything since she first enquired about renting it. She does not know whether Mr McGlone looks after the property in a professional capacity for the Respondent or because he is related to him. She advised the Tribunal that she has experienced stress because of a number of issues related to the property – the repairs, the landlord registration issue and the failure by the Respondent to register the deposit until after her application was submitted to the Tribunal.

Findings in Fact

9. The Applicant is the tenant of the property.
10. The tenancy started on 3 August 2019.
11. The Respondent is the owner and landlord of the property.
12. The Applicant paid a deposit of £350 on 5 August 2019.
13. The deposit paid by the Applicant was not lodged by the Respondent in an approved tenancy deposit scheme until 19 January 2021.

Reasons for Decision

14. Regulation 3 of the 2011 Regulations states –

(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.

15. The Tribunal is satisfied that the Applicant's tenancy is a relevant tenancy in terms of the 2011 Regulations and that a deposit of £350 was paid and not lodged in an approved deposit scheme within 30 days of the start of the tenancy. The Tribunal notes that the tenancy is ongoing, and the Applicant has therefore complied with Regulation (9)(2) of the 2011 Regulations, which requires an application to be submitted no later than 3 months after the tenancy had ended.

16. Regulation 10 of the 2011 Regulations stipulates that if the Tribunal is satisfied that the landlord did not comply with a duty in terms of regulation 3, it “**(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.**” The Tribunal therefore determines that an order must be made in favour of the Applicant.

17. The Applicant seeks an award of three times the deposit, the maximum which can be awarded. However, the Tribunal notes that the deposit is now secured and has been since 19 January 2021, so there is no prospect of any adverse financial consequences at the end of the tenancy. The Tribunal was disappointed by the Respondent's failure to participate in the CMD or provide any information, particularly since the CMD had twice been continued to give Mr McGlone the opportunity to consider the papers and take instructions. The Tribunal is therefore unaware of the reasons for the failure to lodge the deposit or whether the Respondent is an experienced landlord, or otherwise. Although Mr McGlone himself may have experience, the Tribunal notes that he is not responsible for compliance with the regulations in relation to the property. In the circumstances, the Tribunal concluded that it would have to make a decision based on the information provided only by the Applicant.

- 18.** The Tribunal notes that the deposit was not secured for a period of 17 months and was only lodged with SDS after the application to the Tribunal had been served on the Respondent. It also appears the Respondent failed to comply with other statutory obligations, namely the obligation to register with the Local Authority as a private landlord, although this too has now been addressed. There is no evidence that the failure to lodge the deposit was deliberate, but the Respondent has demonstrated a very casual attitude towards his legal obligations, and it seems highly unlikely that the deposit would have been secured if the Applicant had not made this application.
- 19.** The Tribunal is satisfied that an award of twice the deposit should be made in favour of the Applicant, the sum of £700.

Decision

- 20.** The Tribunal determines that an order for payment of the sum of £700 should be made 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.

Josephine Bonnar, Legal Member

30 April 2021