



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under The Tenancy Deposit Schemes (Scotland) Regulations 2011 as amended by The Tenancy Deposit Schemes (Scotland) Amendment Regulations 2019. (“the Regulations”).

Chamber Ref: FTS/HPC/PR/21/0533

Re: Property at 3/2 Hartington Gardens, Edinburgh, EH10 4LD (“the Property”)

Parties:

Ms Lauren Hockenhull, Ms Katherine Oldfield, 5/7 Sinclair Close, Edinburgh, EH11 1US (“the Applicants”)

Ms Geri Y Ellis c/o Zone Letting Ltd, 30 St Stephen Street, Edinburgh, EH3 5AG (“the Respondent”)

Zone Letting Ltd, 30 St Stephen Street, Edinburgh, EH3 5AG (“the Respondent’s Representative”)

3/2 Hartington Gardens, Edinburgh, EH10 4LD (“the Property”)

Tribunal Member:

Martin McAllister (Legal Member)

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the sum of Two Hundred and Fifty Pounds (£250) to the Applicant.**

Background

- 2. On 8th March 2021 the Tribunal received an application from the Applicants seeking payment of a sum in compensation under regulation 10(a) of the Regulations. The date of the case management discussion was intimated to the Respondent. The Respondent’s Representative made written representations by letter dated 6th May 2021.**

3. A case management discussion was held on 27th May 2021. It was held by audio conferencing because of the current public health emergency. The Legal Member set out suggested protocols for the case management discussion and he also explained its purpose.

4. The Tribunal had regard to the following documents:

- i) Application dated 8th March 2021;
- ii) Private Residential Tenancy Agreement dated 13th December 2019;
- iii) Receipt from Respondent's Representative dated 5th November 2019 in respect of the deposit paid;
- iv) Email from SafeDeposits Scotland dated 18th February 2020 confirming that deposit held.
- v) Letter from Respondent's Representative dated 6th May 2021.

5. The Law

The Tenancy Deposit Schemes (Scotland) Regulations 2011

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.

9. (1) A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—

(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 sheriff 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.

Case Management Discussion

6. Ms Hockenhull and Ms Oldfield were present. Mr Byram Tavadia, a Director of Zone Letting Ltd was present.

Findings in Fact

6.1 The Applicants and the Respondent were parties to a Private Residential Tenancy Agreement for the Property.

6.2 The tenancy commenced on 17th December 2019 and came to an end on 2nd March 2021.

6.3 The Applicants paid a tenancy deposit of £1,125 to the Respondent.

6.4 The Respondent did not lodge the tenancy deposit with an approved tenancy deposit scheme until 14th February 2020.

6.5 The tenancy deposit was repaid to the Applicants upon the termination of the tenancy.

Finding in Fact and Law

7. The tenancy deposit required to be paid to an approved tenancy deposit scheme by 31st January 2020 which was thirty working days from commencement of the tenancy.

Reasons

8. Parties helpfully set out what was agreed between them:

Parties entered into a private residential tenancy agreement for the Property with a commencement date of 17th December 2019.

A tenancy deposit of £1,125 was paid to Zone Letting Ltd, as agent of the Respondent, by the Applicants in advance of the commencement of the tenancy. The tenancy deposit was not paid into an approved tenancy deposit scheme until 14th February 2020.

The tenancy came to an end on 2nd March 2021.

- 9. The letter from the Respondent's Representative of 6th May 2021 stated that it accepted that the tenancy deposit had not been properly dealt with and that it should have been sent to SafeDeposit Scotland by 31st January 2021 and that, accordingly the Respondent's Representative was 10 working days late in paying it to them in terms of the Regulations.**
- 10. The letter states that the reason for the oversight was partly due to the commencement of the tenancy being just before the Christmas period. It states that members of staff were also absent because of leave and then illness.**
- 11. The letter states that the Zone Letting Ltd has now put in place more stringent arrangements to ensure that tenancy deposits are dealt with in a timeous manner.**
- 12. The letter states that, in considering the length of the tenancy, the deposit was not protected for 2.2% of its duration.**
- 13. Mr Tavadia apologised for the oversight and reiterated what was contained in the letter of 6th May 2021. He said that his office had discovered the error and had lodged the tenancy deposit as soon as the matter had come to light. Mr Tavadia detailed the precautions now in place to ensure that tenancy deposits are dealt with in a proper manner.**
- 14. Ms Oldfield acknowledged that she was pleased to hear that there are new measures which had been put in place and she accepted that, for a large period of time, the tenancy deposit had been protected.**

The Sanction

- 15. The creation of regulations to cover tenancy deposits was to protect tenants' funds and provide a structured process of dispute resolution. The Respondent's letting agent received £1,125 as a tenancy deposit but did not lodge it with an approved deposit scheme within thirty working days of the beginning of the tenancy.**
- 16. The Regulations are clear in stating that, where there is a breach such as this, the Tribunal must make an order requiring a Landlord to pay a Tenant a sum not exceeding three times the amount of the tenancy deposit. The amount is a matter of judicial discretion and must reflect what is a fair, proportionate and just sanction, having regard to the purpose of the Regulations and the gravity of the breach. It is a balancing act.**
- 17. In this particular case, the Tribunal had regard to the fact that the deposit was unprotected for ten days of a tenancy which lasted four hundred and forty one days.**

18. The Tribunal had regard to and adopted the approach of the Court in *Russell-Smith and Others v Uchegbu* (2016) SC EDIN 64 where the Sheriff had effectively stated there to be two broad aspects to the sanction. The first was the period of time the deposit was unprotected and the second is a sum to reflect a weighting taking into account the particular circumstances of the case including the landlord's experience etc.
19. The deposit was unprotected for a period of ten days which was approximately a fortieth of the period of the tenancy. It is considered that the appropriate starting point for the sanction should be £50.
20. The Respondent was represented by a professional letting agent and the Tribunal had some sympathy for her because she was entitled to assume that it would ensure that the Regulations were complied with. Nevertheless, the obligation rests with a landlord and, if a letting agent has failed to comply with its obligations, then that is something which a landlord can raise with it in the context of the contractual arrangements with that letting agent.
21. In this case, the letting agent had apologised for the oversight and had indicated that it had taken steps to ensure that future tenancy deposits were properly dealt with. The Tribunal considered the failure by the Respondent to be at the lower end of the scale and that a financial penalty of £200 is appropriate.
22. The Tribunal determined to make an Order requiring the Respondent to pay the sum of £250 to the Applicants.

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.




Martin J. McAllister, Legal Member
27th May 2021