



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

Chamber Ref: FTS/HPC/PR/21/3119

Re: Property at 1/2, 39 Regent Moray Street, Glasgow, G3 8AL (“the Property”)

Parties:

Mr Daniel Adams, 1/2 27 Skirving Street, Glasgow, G41 3AB (“the Applicant”)

Mr Adil Mahmood, 12 South Bridge, Unit 243, Edinburgh, EH1 1DD; and Mr Rabee Harb, 6 Tullis Street, Glasgow, G40 1HN (“the Respondents”)

Tribunal Members:

Nicola Irvine (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that there had been a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011; and it made an order for payment against the First Respondent in favour of the Applicant in the sum of £300.00.

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment arising from the First Respondent’s failure to lodge a tenancy deposit with an approved scheme.
2. By decision dated 28 January 2022, a Convenor of HPC having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion.
3. In support of his application, the Applicant produced copies of e-mail and whatsapp correspondence; information about the tenancy including the parties, the address of the subjects, the start of the tenancy, the end of the tenancy, the

rent payable and the frequency of the rental payments; evidence of the payment of the deposit; and evidence that the deposit had not been placed in any approved schemes.

The Case Management Discussion

4. The Applicant participated in the case management discussion which took place by conference call and proceeded in the absence of the Respondents. Notice of the case management discussion had been served on the First Respondent by Sheriff Officer on 21 February 2022. Notice of the hearing had not been served on the Second Respondent. The Applicant failed to comply with the Notice of Direction, requiring him to provide an alternative address for the Second Respondent. The Applicant explained that he did not have any alternative address for the Second Respondent and he sought no order against him. The Applicant's position was that the First Respondent was his landlord and did not hold himself out as an agent for any other party. The Tribunal was satisfied with the explanation provided.
5. The Applicant referred the Tribunal to the papers which had been lodged in support of the application, including e-mail and whatsapp correspondence with the First Respondent; information provided about the tenancy; evidence of the payment of the deposit; and email correspondence with Safe Deposits Scotland, My Deposits Scotland and Letting Protection Service Scotland. The application related to the landlord's failure to place the deposit with an approved tenancy deposit scheme.
6. The Applicant advised that he was unable to provide a copy of the tenancy agreement as he was never given a written agreement. He advised that information regarding the tenancy was exchanged via email correspondence with the First Respondent. The email contained various attachments named 'House Rules', 'House Cleaning Rules', 'House Utility and Inspection Rules', 'Black Mould'. The attachments did not provide any further information in respect of the tenancy agreement and related to the property itself. The First Respondent asked the applicant to read the attached documents, fill out an online form, pay the deposit of £100, email him an official form of photo ID and ensure that the rent due for the month is paid on or before the date that the Applicant collected his keys.
7. The Applicant advised that the tenancy start date was 15 May 2021 and the rent payable was £500 per calendar month. The Applicant further advised that he often incurred costs for heating and other expense on behalf of the First Respondent and deducted those costs from the rent due. The Applicant paid a deposit of £100 to the First Respondent. The Applicant expected the deposit to be repaid at the end of the tenancy.
8. The Applicant advised that he sent a text message to the First Respondent on 26 November 2021 requesting that his deposit was repaid. The First Respondent did not respond to this message. The Applicant advised that the First Respondent refused to repay the deposit as there was a dispute over the heating payments that the Applicant had incurred.

9. The Applicant advised that there were other tenants living in the property. The Applicant was made aware that the other tenants received their deposit back. He understood that they had received the deposit directly from the First Respondent instead of through an approved tenancy deposit scheme.
10. The Applicant contacted Safe Deposits Scotland, My Deposits Scotland and Letting Protection Service Scotland to enquire as to whether his deposit was held with them. He was advised that none of the above agencies had a record of his deposit.
11. The Applicant advised that the First Respondent was an experienced landlord; he had offered the Applicant 5 or 6 other properties when he viewed the flat so it was clear that he was renting a number of properties at one time.

12. **Findings in Fact and Law**

- a. The Applicant and First Respondent entered into a tenancy which commenced on 15 May 2021.
- b. The Applicant paid the First Respondent a tenancy deposit of £100 on or around 6 May 2021.
- c. The tenancy ended on 30 November 2021.
- d. The tenancy deposit was not lodged with an approved scheme within 30 working days of the tenancy beginning.
- e. The tenancy deposit was not lodged with an approved scheme at any time during the tenancy.
- f. The First Respondent had not provided the Applicant with information about the tenancy deposit, as required to do so under regulation 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
- g. The tenancy deposit had not been repaid to the Applicant.

Reasons for Decision

13. The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits, and relevant to this case are the following regulations: -

Duties in relation to tenancy deposits

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.

Sanctions

9.– (1) A tenant who had paid a tenancy deposit may apply to the [First-tier Tribunal] 1 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 [...]2 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 [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.

14. The Tribunal was satisfied that the deposit had not been paid into an approved scheme in accordance with the terms of the regulations. Therefore, the terms of regulation 10 are engaged, and the Tribunal must order that the First Respondent pay the Applicant an amount not exceeding three times the amount of his tenancy deposit. The amount to be paid requires to be determined according to the circumstances of the case, the more serious the breach of the regulations the greater the penalty.
15. In this case, the Tribunal considered that the sum of £300.00 is appropriate. This is a sum that is 3 times the value of the deposit. The Tribunal considered that this breach is serious, and any penalty should therefore be at the higher end of the scale.
16. In considering what penalty to impose, the Tribunal had regard to the oral and written submissions of the Applicant.
17. The Tribunal noted that the First Respondent did not submit written representations in response to the application nor did he participate in the case management discussion. The First Respondent did not respond to correspondence from the Applicant. It would therefore appear that he has no intention of repaying the deposit. The Tribunal took account of what was said about the First Respondent's experience as a landlord.
18. The deposit has not been repaid to the Applicant. It is the issue of the First Respondent determining that he was retaining the full deposit which the Tribunal considered most serious. The First Respondent had full control over the deposit, and failure to place the deposit into an approved scheme deprived the Applicant of a fair and impartial adjudication process to determine the fairness or otherwise of any deductions to the deposit.
19. It is a serious matter for a landlord to fail to lodge a tenancy deposit in accordance with the Regulations. Orders in these cases impose a sanction on a landlord to address a mischief. The Regulations are also there to provide both parties with a fair adjudication process if parties cannot agree on what should happen to a deposit at the end of a tenancy such as in this case. There appears to have been a careless disregard for the tenancy deposit regulations and the Applicant was deprived of the protection that the Regulations seek to establish.
20. For all the reasons set out above, the Tribunal considered that the breach is serious, and that a sanction of THREE HUNDRED POUNDS (£300.00) is appropriate in this case.

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.

Nicola Irvine

Legal Member/Chair

5 April 2022

Date