



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 on an application made under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/22/3451

Re: Property at 1/3 110 Elderslie Street, Glasgow, G3 7AR (“the Property”)

Parties:

Miss Gemma Glven and James Robert Martin Kerr, 9 Killowen Park, Lisburn, BT28 3LD; 16 Bristow Park, Belfast, BT9 6TH (“the Applicants”)

Mr Christopher Hetherington, whose present whereabouts are unknown (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Robert Buchan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted without a Hearing and made an Order for Payment by the Respondent to the Applicants of the sum of One Thousand Two Hundred Pounds (£1,200).

Background

By application, received by the Tribunal on 19 September 2022, the Applicants sought an Order for Payment in respect of the failure of the Respondent to comply with Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The Applicants’ complaint was that the Respondent had failed to lodge their deposit of £950 in an approved tenancy deposit scheme.

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties, commencing on 1 July 2021 at a rent of £950 per month, with a deposit of £950. The Applicants were seeking an Order for Payment of at least the full amount of the deposit.

The Applicants did not provide the Tribunal with confirmation from each of the three approved tenancy deposit scheme organisations that the deposit had not been lodged

with them, but they included with their application a copy of a Whatsapp message from the Respondent, sent after the tenancy ended, in which he said that he had completely forgotten to put their deposit into a holding scheme. He added "I'm happy to give you your deposit back but I need to deduct the costs that are outstanding. This would be the same if doing this via a holding scheme."

On November 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by December 2022. The notification was sent to the Respondent by email, as the Tribunal did not have an address for him and sheriff officers were, therefore, unable to effect service.

The Respondent did not make any written representations by the deadline indicated in the notification, but did so by email on 30 January 2023. He stated that he had had a very detailed conversation with the Applicants about a utilities bill of £761.13. The utilities providers had indicated in April 2022 that the monthly direct debit payments should be increased to £352.

The Applicants responded to the Respondent's email on 31 January 2023, providing a copy of a WhatsApp message from the Respondent of 26 April 2022, in which he had raised the issue of the proposed increase in monthly payments. They also provided evidence of their having added £350 to the monthly rent payments on 31 May and 30 June 2022.

On 31 January 2023, the Respondent provided further written submissions in which he stated that he had been willing to return the balance of deposit £188.87, but decided not to do so, as the Applicants had told him they were going to make an application to the Tribunal and he felt it would be sorted out by the Tribunal. The deposit had been kept in a separate account and it was only the outstanding utility bill that caused him to withhold it. In an email sent to the Tribunal on the morning of the Case Management Discussion, he said that he had not let the last payment of £352 go through in July 2022, as the Applicants had given notice.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the morning of 1 February 2023. The Applicants and the Respondent were all present.

The Respondent confirmed that the letting arrangement with the Applicants had been a sub-tenancy. He had continued to pay the utilities bills by monthly direct debit and had recovered the cost of these by an addition to the monthly rental payments. With rising energy costs, however, the cost of gas and electricity consumed was more than the amount of the direct debit payment and the shortfall had not been made up by the time the tenancy ended. He advised the Tribunal that the failure to lodge the deposit had been a complete oversight on his part but stressed that he had kept it in a separate account. He had not let the Property before the Applicants' tenancy.

The Applicants told the Tribunal that the Respondent had their bank details and if he had even transferred back to them the "balance" as he saw it, they would have felt much more comfortable, but £950 was a large amount of money and they had not had the security of a mediation that lodging it in a deposit scheme would have given them. They would have disputed the utilities bill but had been denied the opportunity to do so.

The Parties then left the conference call and the Tribunal members considered all the evidence, written and oral, before them.

Findings in Fact

- The Parties entered into a lease of the Property which commenced on 1 July 2021.
- A tenancy deposit of £950 was paid to the Respondent.
- The Respondent failed to lodge the deposit in an approved tenancy deposit scheme at any time during the tenancy.
- The tenancy ended on 1 August 2022.
- The deposit has not been repaid to the Applicant.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it would determine the application without a Hearing.

Under Regulation 3(1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("The 2011 Regulations"), a landlord must, within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme. Under Regulation 10, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal **must** order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit.

The view of the Tribunal was that, by failing to lodge the deposit with one or other of the approved tenancy deposit schemes, the Respondent had denied the Applicant the essential safeguard provided by the 2011 Regulations, namely the right to have had any claim made by the Respondent against the deposit determined independently by a tenancy deposit scheme administrator, when the tenancy ended. The Respondent had indicated his intention to deduct £761.13 from the deposit. This had been disputed by the Applicants. The Respondent might or might not have been justified in wishing part of the deposit to be paid over to him to reimburse him the cost of electricity and gas used consumed during the tenancy. This would have been determined by the company holding the deposit, had he complied with the requirement to lodge it, so the Respondent too had lost the opportunity to make the case for only part of the deposit being returned to the Applicant.

It is not part of the Tribunal's remit in such cases as this to speculate on the possible decision that might have been arrived at by a tenancy deposit scheme, so the Tribunal made no findings as to whether any deductions might have been justified. The role of the Tribunal is to determine the level of sanction to be applied, having taken into account all the evidence before it. In the present case, the tenancy agreement stated that the deposit would be lodged with an approved tenancy deposit scheme, so the Respondent had constructive knowledge of the legal requirements. Ignorance of the law is not, in any event, any excuse. The Tribunal was unable to determine whether his failure was deliberate or accidental but noted that the Respondent had at least kept the deposit in a separate account and had engaged with the Tribunal process and had

participated in the Case Management Discussion. The Applicants, however, had been denied the right to contest the Respondent's claims against the deposit and to have these claims independently adjudicated. Accordingly, the Applicant's money was at risk throughout the period of the tenancy and remains at risk many months later.

Having considered all the facts and circumstances of the case, the Tribunal decided to order the Respondent to pay to the Applicants the sum of £1,000. This was a figure that the Tribunal regarded as fair, proportionate and just, taking into account the fact that the deposit has not been repaid and the stress and inconvenience caused to the Applicant by the Respondent's failure to lodge the deposit as required by law. For the avoidance of doubt, however, this figure is deemed to include the sum of £188.87 that the Respondent accepts he is due to refund 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.

G Clark

Legal Member/Chair

1 February 2023
Date