



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

Chamber Ref: FTS/HPC/PR/23/1517

Re: Property at 42A Fenwickland Avenue, Ayr, KA8 9DB (“the Property”)

Parties:

Mr Edward Tynski, 14 Content Street, Ayr, KA8 9DP (“the Applicant”)

Mrs Caroline Goudie, 25 Glenalla Crescent, Ayr, KA7 4DA (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was in breach of her obligations in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) regulations 2011 and that the Applicant must pay the Respondent the sum of £92.50.

Background

1. By application dated 19 May 2023 the Applicant’s representative, Mr Gerry Tierney, Ayr Housing Aid Centre, Ayr applied to the Tribunal for a decision under Regulation 9 of the tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). Mr Tierney submitted a copy of the Applicant’s tenancy agreement, correspondence from Safe Deposits Scotland and a copy text from the Respondent to the Applicant in support of the application.
2. Following acceptance of the application, intimation of a Case Management Discussion was served on the Respondent by Sheriff Officers on 12 June 2023.
3. By email dated 13 June 2023 the Respondent submitted written representations to the Tribunal.

4. By email dated 15 June the Respondent submitted further written representations to the Tribunal.
5. By email dated 7 July 2023 the Applicant's representative submitted further written representations on behalf of the Applicant to the Tribunal.

The Case Management Discussion

6. A CMD was held by teleconference on 13 July 2023. The Applicant attended in person and was represented by Mr Tierney. The Respondent also attended in person.
7. It was agreed that the parties entered into a Private Residential tenancy that commenced on 21 December 2020 at a rent of £370.00 per calendar month. It was also agreed that the applicant had paid the Respondent a deposit of £370.00 at the commencement of the tenancy and that the deposit had been lodged with Safe Deposits Scotland and secured with effect from 17 February 2021. After some discussion it was accepted that the deposit had been lodged with Safe Deposits Scotland 8 days late.
8. The Respondent referred the Tribunal to her written representations and explained that she owned four rental properties and that this was the first time in twenty years that she had failed to lodge a tenant's deposit on time. She said she did not consider herself to be a professional landlord and was employed as a district nurse. She said the failure to lodge the deposit had been an oversight due to being ill.
9. The Applicant queried why the Respondent's husband had not dealt with the deposit as he had always been the person the Applicant had spoken to during the tenancy. The Respondent said that although her husband dealt face to face with the tenants, she dealt with all the paperwork.
10. It was agreed that the Applicant had made the application timeously having ended on 10 April 2023 and the application being made on 19 May 2023.
11. For the Applicant Mr Tierney made brief reference to the Upper Tribunal decision in the case of Rollett v Mackie UTS/AP/19/0020 and acknowledged the Tribunal had a wide discretion with regards to the level of sanction to be imposed upon the Respondent. He suggested that a relevant consideration for the Tribunal was that at the end of the tenancy the Respondent had attempted to recover the whole deposit from the Tenancy Scheme Administrators when after adjudication the applicant had retained more than half of it as was shown on the adjudicator's decision that had been submitted. Mr Tierney also said that whilst he was sorry that the Respondent had been ill it would have been possible for her husband to have lodged the deposit timeously for her.
12. The Respondent queried what hardship or prejudice had been experienced by the applicant as a result of the delay in lodging the deposit with Safe Deposits Scotland. She said that she and her husband shared an email address but that

it was herself who dealt with all the paperwork associated with the flat rentals and she was to blame for the delay. She went on to say that she had been disappointed by the Adjudicator's decision but that the photos of the property both before and after the tenancy had been taken at different angles and did not show things as she had hoped.

13. Both parties were content for the Tribunal to make a final decision without continuing to a hearing.

Findings in Fact

14. The parties entered into a Private Residential tenancy that commenced on 21 December 2020 at a rent of £370.00 per calendar month.
15. The applicant paid a deposit of £370.00 to the Respondent at the commencement of the tenancy.
16. The Respondent lodged the deposit with Safe Deposits Scotland on 17 February 2021.
17. The deposit was lodged 38 working days after the commencement of the tenancy.
18. The Respondent owns four rental properties.
19. The Respondent has not previously been sanctioned for the late lodging of a tenant's deposit.
20. The Respondent was ill around the time she ought to have lodged the deposit with Safe Deposits Scotland. Although the Respondent's husband assists with the running of the Respondents rental properties the Respondent deals with the paperwork involved.
21. The Applicant's tenancy ended on 10 April 2023.

Reasons for Decision

22. The Respondent failed to comply with regulation 3.(1)(a) of the 2011 regulations in that she failed to lodge the Applicant's deposit with Safe Deposits Scotland within 30 working days of the commencement of the tenancy. The deposit was lodged 8 days late. The application was made timeously.
23. In terms of regulation 10 the Tribunal, if satisfied that the Respondent did not comply with any duty in Regulation 3, must order her to pay the Applicant an amount not exceeding three times the deposit. It is well settled that the maximum award should be reserved for the most serious cases where a tenant's deposit has been unsecured for a long period and the landlord has deliberately ignored the regulations. That is not the case here, The Applicant's

deposit was unsecured for a very short period and although the Respondent is clearly an experienced landlord having owned several rental properties for some twenty years this is the first occasion a deposit has been lodged late. The Tribunal therefore considers that any sanction imposed should be very much at the lowest end of the scale.

24. The Tribunal did not think any significant weight should be given to the submissions made on the Applicant's behalf with regards to the Respondent seeking to recover the deposit at the end of the tenancy. A significant part of the Tenancy Deposit Scheme is the adjudication service offered to landlords and tenants and the Tribunal did not consider the outcome of the adjudication to be of relevance. The Tribunal also did not consider it particularly relevant that the Respondent's husband who apparently is involved with face-to-face dealings with tenants had not lodged the deposit during the Respondent's illness when it was she who usually dealt with all the paperwork.
25. Taking into account the short time the deposit was unsecured in relation to the duration of the tenancy but also taking account of the fact that the Respondent is an experienced landlord who should know the importance of ensuring that tenants' deposits are secured timeously the Tribunal considers that a fair, just and proportionate sanction in the circumstances is to award the Applicant the sum of £92.50 being the equivalent of 25% of the deposit.

Decision

26. The Respondent shall pay the Applicant the sum of £92.50.

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 Harding

Graham Harding
Legal Member/Chair

13 July 2023
Date

