



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/22/2818

Re: Property at Flat 3A, Irvine Place, Stirling, FK8 1BZ (“the Property”)

Parties:

Ms Di Zhang, C/O Shakti Women's Aid, Norton Park, 57 Albion Road, Edinburgh, EH7 5QY (“the Applicant”)

Mr Umer (aka Alex) Ayub, 8 Gambeson Crescent, Stirling, FK7 7XG (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member)

Decision

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 Respondent in favour of the Applicant in the sum of £650.00.

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 Respondent’s failure to lodge a tenancy deposit with an approved scheme.
2. In support of her application, the Applicant produced a copy tenancy agreement, email correspondence with administrators of approved schemes and screenshots of text messages between the parties.

3. By decision dated 19 August 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 ("CMD").
4. The Notice of Acceptance was intimated to the Applicant on 19 August 2022. The Tribunal intimated the application to the parties by letter of 12 September 2022 and advised them of the date, time and conference call details of today's CMD. In that letter, the parties were also told that they required to take part in the discussion and were informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and considers the procedure to have been fair. The Respondent was invited to make written representations by 3 October 2022.
5. On 22 September 2022, the Tribunal received a letter dated 20 September 2022 from a firm of solicitors acting for the Respondent. The Respondent's solicitor explained that the Respondent accepted that he had failed to secure the Applicant's deposit in an approved scheme.
6. On 30 September 2022, the Applicant lodged further written submissions regarding the condition of the property. On 11 October 2022, the Respondent lodged further written submissions in response.

The Case Management Discussion

7. Both parties participated in the CMD which took place by conference call. The Tribunal arranged for the attendance of an interpreter (Miss Whui Cheng Ng) to translate the proceedings for the Applicant. The Tribunal explained to the parties the purpose of the CMD. The parties were advised that any submissions regarding the condition of the property were not relevant in the determination of this application. The Tribunal noted that the Respondent accepted that he had failed to comply with the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"). He explained that the failure was caused by an oversight on his part to secure the deposit. He accepted that he had received a deposit from the Applicant in the sum of £650 at the outset of the tenancy. The tenancy ended on 31 May 2022 and the Respondent paid £290 to the Applicant on 6 June 2022 which represented part payment of the deposit. He took advice from the Citizens Advice Bureau and realised that he had failed to secure the deposit. The Respondent corresponded by email with the Applicant's Shakti Women's Aid caseworker and offered payment of the balance of the deposit due, along with an overpayment of rent. No agreement was reached about that, but the Respondent remained willing to repay those sums. The Tribunal explained that repayment of the balance of the deposit and an overpayment of rent cannot be dealt with in the context of this application. The Respondent explained that he has been a landlord since January 2020 and owns other rental properties; he has secured other tenants' deposits in approved schemes. The Applicant indicated that she wished her full deposit to

be returned to her, along with a payment representing half a month's rent, which had been overpaid. The Tribunal explained again that these matters cannot be dealt with in the context of this application. The Applicant moved for an order for payment in terms of the 2011 Regulations in respect of the Respondent's failure to comply with those Regulations.

8. Findings in Fact and Law

- a. The Applicant and Respondent entered into a private residential tenancy which commenced 15 January 2022.
- b. The Applicant paid the Respondent a tenancy deposit of £650 on or around 13 January 2022.
- c. The tenancy ended on 31 May 2022.
- 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 Respondent did not provide 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 in full to the Applicant.

Reasons for Decision

9. 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

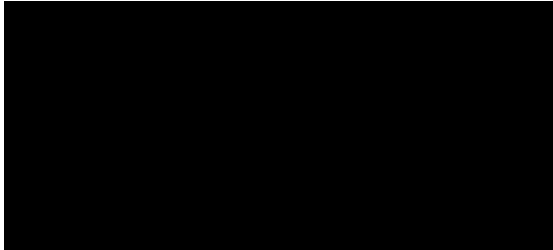
scheme; or (ii) provide the tenant with the information required under regulation 42.

10. 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 Respondent pay the Applicant an amount not exceeding three times the amount of her 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.
11. The Tribunal considered that its discretion in making an award requires to be exercised in a manner consistent with the case *Jenson v Fappiano (Sheriff Court) (Lothian & Borders, Edinburgh) 28 January 2015*. It must be fair, just and proportionate and informed by taking account of the particular circumstances of the case.
12. The Tribunal considered the decision of the Upper Tribunal (UTS/AP/19/0020) which states: *"Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate of reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals."*
13. In considering what penalty to impose, the Tribunal had regard to the oral and written submissions of the parties.
14. The Tribunal noted that the Respondent submitted written representations in response to the application; he accepted candidly that there had been a failure on his part to secure the deposit in an approved scheme. The Respondent had repaid part of the deposit to the Applicant and attempted to reach agreement regarding payment of the full balance of the deposit with the Applicant's caseworker. The Respondent remained willing to repay the remainder of the deposit to the Applicant. The Respondent produced documentation to demonstrate that he has secured the deposit in respect of the current tenant of the property. There was no material before the Tribunal to indicate that the Respondent has failed on other occasions to secure a tenant's deposit.
15. For all the reasons set out above, the Tribunal considered that the penalty should be at the lower end of the scale; in respect of the admitted failure to comply with the 2011 Regulations, a sanction of SIX HUNDRED AND FIFTY POUNDS (£650.00) 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.



Legal Member/Chair

25 October 2022
Date