



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

Chamber Ref: FTS/HPC/PR/22/2135

Re: Property at 58/1 Bryson Road, Edinburgh, EH11 1DR (“the Property”)

Parties:

Ms Shuyun Zhang, 62/5 North Gyle Loan, Edinburgh, EH12 8LD (“the Applicant”)

Ms Wenxuan Sun, 3 Corby Craig Crescent, Roslin, EH25 9TF (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Sandra Brydon (Ordinary 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 £1,500.

Background

1. An application was submitted on 1 March 2022 in terms of Rule 103 (Application for civil proceedings in relation to a private residential tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the 2017 Regulations”).
2. The Applicant sought an order for payment arising from the Respondent’s failure to lodge a tenancy deposit with an approved scheme for payment in the sum of £1,000 in respect of a deposit said to have been paid by her to the Respondent.

3. By decision dated 1 August 2022, a Convenor of HPC having delegated powers of the Chamber President, referred the application under Rule 9 of the Rules to a Case Management Discussion (“CMD”).
4. In support of her application, the Applicant produced a copy tenancy agreement, copy email correspondence which passed between her and the Respondent and a written statement setting out her position.
5. A CMD took place on 10 October 2022. Reference is made to the Note and Notice of Direction issued to parties following that CMD.
6. The Tribunal identified the issue to be resolved at a Hearing as follows:-
 - a) Did the Applicant pay a deposit to the Respondent and if so, when and how much?
7. This application called alongside a related application which proceeds under chamber reference FTS/PR/22/2134. A Hearing was assigned for 16 January 2023 in respect of both applications.

The Hearing – 16 January 2023

8. The Hearing took place by Webex. Both parties participated in the Hearing. The Tribunal arranged for the attendance of an interpreter, Miss Whui Ng, who translated the proceedings for both parties. The Applicant indicated that she intended to give evidence herself and thereafter call two witnesses, namely Peter Pickford (friend) and Jane Weng (sister in law). The Respondent indicated that she intended to give evidence but did not intend to call any witnesses. The evidence given by the parties and the witnesses is summarised below. At the conclusion of the evidence, the Tribunal adjourned the Hearing to enable the members to consider the evidence given. The parties were advised that a written decision with a statement of reasons would be issued to parties.

Summary of evidence

The Applicant – Shuyun Zhang

9. She met the Respondent at a Starbucks on 17 January 2020. She agreed to rent the property at 58/1 Bryson Road, Edinburgh from the Respondent. It was only the parties who were present at this meeting. The Respondent brought a tenancy agreement with her to the meeting and they both signed the agreement. She gave the Respondent £1,000 which was the deposit due. She made the payment in cash consisting of £20 notes. She did not ask for a receipt. They had a discussion about when she would be able to move into the property. They agreed that she would move into the property on 1 March 2020, although she could move her belongings into the property at the end of February.

10. The previous tenant moved out of the property on 22 February 2020. She moved her belongings into the property at the end of February and started living in the property from 1 March 2020.
11. When she moved out of the property in May 2022, the Respondent did not pay the deposit back to her and the reason given was that she had made the property dirty and damp. She denied any suggestion that she or her children damaged the property or caused dampness in the property.
12. Under cross examination, she reiterated that the deposit was paid in cash on 17 January 2020. Reference was made to the CMD when her friend, Peter Pickford advised the Tribunal that the deposit had been paid on 1 March 2020. She explained that her friend must have misunderstood what she said, but she was certain that the deposit was paid on 17 January 2020 at the same time the tenancy agreement was signed. She explained that she did not ask for a receipt because she had no experience of renting from private landlords, having previously rented from local authorities. She treated the tenancy agreement as a receipt, because the tenancy agreement provides for payment of a deposit of £1000.
13. She managed to borrow money from friends and her sister in law in order to pay the deposit. She has repaid friends and her sister in law partly from employment earnings and partly from benefit income.
14. She paid the first month's rent of £850 by bank transfer on 1 March 2020 and continued rental payments at that rate by bank transfer each month.

Peter Pickford

15. He is 30 years of age and lives in Fife. He is a friend of the Applicant, whom he knows as Jessica. He has known her for approximately 16 months and has known her sister in law for a longer period. After the Applicant moved out of the property in May 2022, he contacted the Respondent to ask for the deposit to be returned to the Applicant. The Applicant's sister in law (Jane Weng) had already returned the keys to the property and he tried to find out why the Respondent was withholding the deposit. He was told by the Respondent that she was not handing the deposit back because the flat needed a considerable amount of cleaning and redecoration work. The Respondent advised him that there was dampness in the property. He tried to explain to the Respondent that that was not caused by the Applicant. He asked the Respondent for pictures to evidence the condition of the property, but he was not sure the Respondent understood. He told the Respondent that he would send an email setting out the Applicant's position.
16. He helped the Applicant prepare an email to send to the Respondent, setting out her position. The Applicant did not receive a written response to the email. The Applicant received a voicemail from the Respondent asking if the Applicant could prove that she paid a deposit and asking for a copy of a receipt.

17. The Applicant told him that she paid the deposit on 17 January 2020. He explained that he had misunderstood what the Applicant told him initially.
18. He was asked why he did not attend with the Applicant to witness her signature on the tenancy agreement. He explained that he is a friend of the Applicant and her whole family and tried to assist her in getting her deposit back because he did not like someone being taken advantage of. When cross examined on what he meant by that, he referred to photographs which have been lodged in this case, showing the condition of the property. He made reference to a photograph of the boiler being held together with masking tape and photographs showing mould in the property.

Jane Weng

19. She is the sister in law of the Applicant. The Applicant used to live in a council house and wanted to move house when one of her children was due to go to secondary school. In January 2020, the Applicant asked to borrow money from her. She agreed to lend the Applicant money so that she could pay a deposit for the property. She lent the Applicant £800 in cash. She thinks the Applicant borrowed the remainder of the deposit from friends. The Applicant told her that she had signed the lease and paid the deposit for the property and was very excited about moving. The Applicant eventually repaid the loan of £800.
20. In cross examination, she explained that she did not attend with the Applicant to sign the lease because she has her own business to operate and did not have time to do so. When asked whether she reminded the Applicant to get a receipt, she explained that she always rents properties through an agent rather than directly with a private landlord. She did not know whether the Applicant was dealing with an agent or renting directly from a landlord. She was puzzled when the Respondent asked for production of a receipt.
21. At the end of the tenancy, the Applicant asked her to return the keys to the Respondent. The Applicant told the Respondent on the Tuesday night that she would be returning the keys the following day. She did return the keys to the Respondent and knew that she should receive payment of the deposit in return. The Respondent was reluctant to repay the deposit. The Respondent told her that the property was dirty. She asked the Respondent which rooms she said were dirty. A new tenant had already moved into the property and was in the property when she arrived.

The Respondent

22. She wished to rely upon the statements made in two emails sent to the Tribunal on 11 January 2023.
23. She has been a landlord since 2017 and lets out 2 residential properties and 1 commercial property. The tenancy agreement that she and the Applicant signed says that if the tenant pays a deposit, she will issue a receipt. She did not receive a deposit from the Applicant. She did not issue a receipt for a deposit.

Upon enquiry by the Tribunal as to why she did not amend clause 7 relating to a deposit, she suggested that that was perhaps out of laziness and because she has other properties that she rents out. When tenants pay a deposit to her, she secures their deposits with Safe Deposits Scotland.

24. In cross examination she was asked why she told Mr Pickford that she could not recall whether a deposit was paid whilst thinking that Mr Pickford's contact with her was a scam. She explained that she was suspicious of Mr Pickford and asked him to email her formally so that she could consult her solicitor about it. The day after Mr Pickford contacted her by telephone, she received an email from the Applicant. She left a voicemail message for the Applicant asking her to provide evidence of payment of the deposit and told the Applicant that she would pass information to her solicitor.
25. When Mr Pickford contacted her by telephone, she thought he was a legal representative of the Applicant. That is the reason she asked him to send a formal email so that she could take legal advice.
26. At the end of the tenancy, she asked the Applicant to clean the property and leave the keys inside. The Applicant did not agree to that and told her that someone would deliver the keys back to her. When she attended at the property, she realised that the Applicant had not cleaned the property or left the keys in the property. She had told the Applicant that if the property was not clean, she would have to pay someone to clean it and the Applicant would be responsible for the cost of that.
27. When Ms Weng attended at the property to return the keys, she refused to return the keys unless she repaid the deposit. She told Ms Weng that she would contact the police. Ms Weng handed the keys to her.
28. The reason that she did not demand a deposit from the Applicant is that the Applicant was very sincere and promised to look after the property. The Applicant told her that she was in receipt of housing benefit, so she knew that she would receive payment of the rent.
29. The Applicant is now saying that the property was not in a good condition when she moved in. If that was true, the Applicant would have contacted her at the time.
30. After the Applicant left the property, she refused to provide her new address. She believes that is because the Applicant thought that she might pursue her for the cost of cleaning.
31. In response to the Tribunal, she explained that when the parties met in Starbucks in January 2020, that was the first time a deposit was discussed. She initially did not want to let the property to the Applicant; she was reluctant to let the property to a single parent with children. She bought the property in 2019 and it was in good condition. The Applicant insisted that she was in receipt of

benefits, and so the rent would be paid directly to her. She was persuaded to let the property to the Applicant.

Findings in Fact

32. The Applicant and Respondent entered into a private residential tenancy which commenced on 1 March 2020.
33. The Applicant paid a deposit to the Respondent in the sum of £1,000 on or around 17 January 2020.
34. The Respondent did not repay the deposit to the Applicant.
35. The Respondent did not secure the Applicant's deposit in an approved scheme.

Reasons for Decision

36. Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 provides that the First Tier Tribunal has jurisdiction in relation to civil proceedings arising from private residential tenancies. As this tenancy is a private residential tenancy the Tribunal has jurisdiction to determine the present application.
37. The Tribunal found the Applicant and her witnesses to be credible and reliable. Their evidence was coherent and given in a straightforward manner. By contrast, there were inconsistencies in the Respondent's evidence.
38. In her statement by email dated 11 January 2023, the Respondent says that she asked the Applicant for a surety. She went on to say that after the Applicant begged her, she agreed to let the property to the Applicant because she was compassionate. However, in her evidence she said that the Applicant told her that she was in receipt of housing benefit and the rent would therefore be paid directly to her. There appears to be an inconsistency between her confidence that she would receive rent and her request for a surety or guarantor.
39. At paragraph 2 of her written statement, the Respondent stated "what I said was I couldn't recall she ever gave me deposit. I won't give the "deposit" and she need fix the flat problem.....after my investigation then I found out: our original agreement was she was supposed to pay me deposit upon getting the keys of my flat but she never did by asking me to show sympathy to her as single mum." In her evidence, she explained that she did not know who Mr Pickford was, so told him she could not recall and would have to investigate.
40. In cross examination of the Applicant and her witnesses, and indeed during her own evidence, the Respondent made much of the fact that a receipt was not produced for the deposit.
41. The Respondent's position was that it cost her more than £1,000 to put right the damage to property and the cleaning of the property. The Respondent did

not produce any evidence of costs incurred by her in effecting repairs or cleaning the property. Evidence from the Ms Weng was that when she attended to return keys, a new tenant had already moved into the property. That evidence was unchallenged. It appears therefore that there was little or no time for any repairs or cleaning to be undertaken.

42. 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.

43. It was an agreed fact at the CMD that the Respondent did not secure a deposit for the Applicant in an approved scheme. The Tribunal having determined that the Applicant did pay a deposit of £1,000 to the Respondent, 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.
44. 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.
45. 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.”

46. The Tribunal noted the Respondent’s denial of fault on the basis that she did not accept that a deposit had been paid. There was no evidence before the Tribunal that the Respondent had ever breached the regulations in the past.

47. 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 ONE THOUSAND FIVE HUNDRED POUNDS (£1,500.00) 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.

N. Irvine

Legal Member/Chair

25 January 2023
Date