



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/PR/21/1751

Re: Property at Flat 0/2, 64 Otago Street, Glasgow, G12 8PE (“the Property”)

Parties:

Mr Adam Ali, 13 Essex Road, Edinburgh, EH4 6LF (“the Applicant”)

Mrs Rajinder Gill, 36 Beaconsfield Road, Glasgow, G12 0NY (“the Respondent”)

Mr Parm Gill, 36 Beaconsfield Road, Glasgow, G12 0NY (“the Respondent’s Representative”)

Tribunal Member:

Ms. Susanne L. M. Tanner Q.C., Legal Member and Chair

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that an order must be made in terms of Regulation 10 of the 2011 Regulations requiring the Respondent to pay to the Applicant the sum of ONE HUNDRED POUNDS (£100.00) Sterling

Procedural background

1. On 21 July 2021, the Applicant made an Application to the tribunal. The Application is made in terms of Rule 103 of the 2017 Rules, namely an application for an order for payment where the landlord (Respondent) has failed to carry out duties in relation to tenancy deposits.

2. The Applicant attached to the Application:

2.1. Supporting evidence from Safe Deposits Scotland in relation to deposit protection.

3. On 3 August 2021, the Application was considered by a legal member acting under the delegated powers of the President and the Application was accepted for determination by the tribunal.
4. On 5 August 2021, the tribunal issued Directions to the Applicant requiring him to provide additional information.
5. A Case Management Discussion ("CMD") teleconference was fixed for 17 September 2021 at 1400h and parties were notified of the date, time and details of the CMD, which both parties were required to attend. Parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application. Parties were advised that if they did not attend the CMD, this would not stop a decision or order from being made by the tribunal if the tribunal considered that it has sufficient information before it to do so and the procedure has been fair. The Respondent was invited to submit any written representations he wished by 6 September 2021. On 18 August 2021, the Application paperwork and notification of the hearing was served on the Respondent by Sheriff Officers.
6. On 16 September 2021, the Applicant responded to the tribunal's Directions and submitted evidence of payment of the deposit to the Respondent; provided further details of the tenancy; and confirmed the end date of the tenancy. The Applicant submitted a request to amend the Application form section 7(c) to seek a payment order at the maximum permissible amount of three times the tenancy deposit.
7. On 16 September 2021, the Respondent's Representative submitted a copy document (3 pages) which was said to be the lease for the property. It was not a Private Residential Tenancy model agreement and appeared to be incomplete. In response to a query from the tribunal about whether this was the complete document and whether the Scottish Government Supporting Notes for a Private Residential Tenancy had been provided to the Applicant, the Respondent's Representative replied stating that, *"a hard copy of the model tenancy agreement along with supporting notes was provided to the tenants at the time from the following website <https://www.gov.scot/publications/scottish-government-modelprivate-residential-tenancy-agreement/>. The tenants were also directed to the scottish government website too. Unfortunately I no longer have the electronic copy however the tenants will have the hard copies."*

Case Management Discussion (“CMD”) – 17 September 2021 – by teleconference

8. The Applicant attended the teleconference.
9. Mrs Gill, Respondent attended the teleconference with her son, Mr Parm Gill acting as her Representative. Mr Gill indicated that he was acting as his mother’s representative for reasons connected with her health.
10. The tribunal chair explained the nature and purpose of the CMD and both parties indicated that they understood.

The Applicant’s submissions

11. The Applicant stated that the tenancy started on 16 September 2020. The deposit was paid on the same day as per the evidence produced. He and his flatmate received correspondence from Safe DepositsScotland (SDS) on 16 November 2020. It showed that the deposit was uploaded on 13 November 2020. They were made aware by SDS that because it was late, they were eligible to apply to the tribunal. The deposit was £1275.00. He noted that when the payment was made it appeared that he must have overpaid by an extra £40 in error towards deposit plus rent. He stated that looking at the dates, it appeared to have been paid 12 working days late.
12. In relation to his tenancy, the Applicant stated that the three page document which had been produced by the Respondent’s Representative to the tribunal is exactly what they signed on the day they moved in. A copy of that was never actually provided to them, hence why he could not provide a copy when requested to do so. He stated that he has rented flats in the past throughout his studies and is familiar with tenancy agreements. In relation to the Respondent’s Representative’s written submissions stating that a PRT model agreement and supporting notes had been issued he stated that that definitely did not happen and repeated that he was not even given a copy of the three page tenancy agreement which he was asked to sign and did sign, along with his flatmate.
13. He stated that he was not told anything about deposit being lodged late by the Respondent or her Representative. After the letter was sent to him by SDS, he did not consider tribunal proceedings at that time because he felt uncomfortable doing so while he was living in the flat. The tenancy was ended by the Applicant and his flatmate giving notice. There were some gas and heating issues with the flat which

took some time to get rectified. The Applicant and his flatmate decided that it was too much and decided to leave. They gave notice on 8 March 2021 to end the tenancy on 21 April 2021. However their official move out got delayed by a few days because the Respondent's Representative was not available. They paid rent for the period up until 21 April 2021.

14. In response to a question from the tribunal about the payment order which was sought as per the amended application at the maximum end of the scale, the Applicant stated that he had not been aware that there was a spectrum of awards and had assumed that it was a fixed penalty. He stated that nonetheless, he thinks that the Respondent should be made to pay a penalty of some sort because the deposit money was compromised for that period. He added that alongside this issue there were several other issues with their tenancy but he realised that they were not directly relevant to the late lodging of the deposit.
15. The Applicant stated that they did not get their full deposit back at the end of the tenancy. He stated that he remembers on the move-in date, Mr Parm Gill (the Respondent's Representative) was the only person he dealt with. They were not aware someone else owned the property. He stated that on the move-in date, the Respondent's Representative was quick to brush over condition issues and asked them to sign the agreement. When they were moving out, the Respondent's Representative was quick to point out issues. The Applicant stated that they lost around £400 off the deposit. That was progressed through the SDS dispute scheme. He agreed to the deduction as he had so much on his mind at the time. Both parties agreed to that amount. The Applicant accepted that ultimately he did have access to the dispute mechanism had he wished to use it.

Respondent's Representative's submissions

16. The Respondent's Representative stated that it is accepted that it was lodged 12 days outwith the 30 working day period. He stated that he is not going to try to justify it because it was late and he can only apologise for the inconvenience. By way of explanation, he stated that time his mum was shielding and it was quite a stressful time. His wife was also in the vulnerable category. The money was paid by bank transfer to his mum. It was not an issue with regards to the money physically. The issue is that they were not quite themselves and they dropped the ball and did not lodge it within the appropriate time. He stated this his mum has had that property for about 30 years and there has never been an issue with deposits. Since the new legislation came in there has never been an issue with not lodging it on time. He stated that the whole Covid thing has taken its toll. The property is now re-tenanted.

17. He stated that he met the Applicant and his flatmate at the start of the tenancy. His mum used to do this herself but because of Covid she could not do it. They signed the three page lease and he had also downloaded the PRT from Scottish Government website, which he went and printed along with the notes and gave that to him in the flat as well. He stated that he also told him about the website. He stated that that was all done on the first day when he was handing over the property, when the inventory was done. He stated that it was an oversight not to get the PRTA signed. He stated that he should have asked for the PRTA to be signed. He stated that he has other rental properties that use PRTA agreements and is aware that that has to be done. For signing, he formerly used a 3 page document which he described as "showing the outline of a tenancy agreement" and then provided the hard copies of the PRTA. He stated that that is not a practice he is still following. He has started using email acceptance. He stated that there is another tenancy at the Property now and that they are on a PRTA.
18. He repeated that he can only apologise for the Respondent lodging the Applicant's deposit 12 days late. He truly is sorry. He stated that he would accept whatever the tribunal's judgment is on the appropriate level of payment order. He stated that it was an error and an honest mistake.

19. Findings in Fact

- 19.1. The Applicant and the Respondent entered into a tenancy for the Property which started on 16 September 2020.
- 19.2. The Applicant paid a deposit of £1275.00 to the Respondent as a tenancy deposit by bank transfer on 16 September 2020.
- 19.3. The deposit was protected with Safe Deposits Scotland on 13 November 2020.
- 19.4. The tenancy ended on 21 April 2021.
- 19.5. The Application to the tribunal was made on 21 July 2021, within three months of the end of the tenancy.
- 19.6. The deposit should have been lodged with a deposit protection company within 30 working days of the start of the tenancy on 16 September 2020.
- 19.7. The deposit was lodged 12 working days late.
- 19.8. The reason for late lodging on the part of the Respondent was oversight.

19.9. Following the end of the tenancy the deposit repayment was dealt with through the tenancy deposit protection scheme.

20. Discussion

20.1. The tribunal took account of the parties' written and oral submissions.

20.2. In particular, the tribunal had regard to the fact that the Applicant's deposit was only unprotected for a period of 12 additional working days, when it should have been lodged within 30 working days of the start of the tenancy. At the end of the tenancy, the Applicant was able to avail himself of the tenancy deposit protection scheme in respect of any dispute about proposed deductions. In fact, the Applicant agreed the proposed deductions. The tribunal took account of the Respondent's submissions advanced as mitigation, in that the Respondent admitted that it was lodged late; it was a short period of time; it was an oversight and an honest mistake; and that he apologised for the inconvenience.

20.3. For the reasons outlined, the tribunal considered that the breach was at the very lowest level on the scale and decided to make an order for payment by the Respondent to the Applicant of the sum of £100.00. That sum was considered to be reasonable in all of the circumstances.

20.4. The tribunal chair informed the Applicant that the Payment Order could be enforced by the Applicant against the Respondent after the expiry of the permission to appeal period.

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.

Ms S. T

17 September 2021

**Ms. Susanne L M Tanner Q.C.
Legal Member/Chair**