



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“The Regulations”) (Any reference to a “Regulation” being to the Regulations).

Chamber Ref: FTS/HPC/PR/21/2742

Re: Property at 396 Gladsmuir Road, Glasgow, G52 2LD (“the Property”)

Parties:

Mrs Janice Stuart, 396 Gladsmuir Road, Glasgow, G52 2LD (“the Applicant”)

Mrs Morag Anderson or Alexander or Cassidy or Brown, 33 Vesuvius Drive, Motherwell, ML1 2EY (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:

Background

The Applicant seeks an award under Regulation 10 for a sum equal to three times the value of a deposit that was paid to the Respondent under a tenancy, but which was not registered with an approved scheme as per Regulation 3.

The Application had called for a Case Management Discussion (CMD) on 24 January 2022. At the CMD the Respondent had admitted breaching Regulation 3 by receiving a deposit of £500.00 from the Applicant pursuant to a tenancy between the parties and failing at any time to register this deposit with an approved scheme. The Respondent sought to put forward facts in mitigation that chiefly related to the Respondent’s own health situation. The Tribunal continued the Application to a Hearing to determine the

matter and made Directions setting out a timeline by which any evidence had to be submitted. The Respondent was also ordered to lodge any relevant medical evidence which the Respondent wished to rely on.

The Hearing

The Application called for a Hearing by conference call at 10 am on 29 March 2022. The Applicant was present along with her representative, Ms Rachel Stuart. The Respondent was not present but her representative, Mr Stuart Anderson was present.

All parties indicated that they were content to proceed. Mr Anderson confirmed that rather than have the Respondent give evidence, he would intend on making representations on behalf of the Respondent. Similarly, whilst the Applicant was present on the call, Ms Rachel Stuart wished to proceed by making representations on the Applicant's behalf.

It seemed therefore that rather than having witnesses give evidence in the traditional manner, that parties intended to have the Tribunal determine the Application based on the information presented within the documentation submitted to the Tribunal and the representations made on behalf of the parties. The Tribunal decided to proceed in this manner.

Submissions on behalf of the Respondent.

Mr Anderson pointed out the Respondent's health issues. The Tribunal noted that whilst no documentation had been lodged with the Tribunal setting these health issues out in a factual manner, Mr Anderson described the Respondent as having *carcinoma in both legs* and having been diagnosed with Multiple Sclerosis.

Mr Anderson's submissions were simple enough to understand. He described the Respondent as being aware of her obligations under the Regulations but forgetting about registering the deposit because her health deteriorated on coincidentally almost exactly the same day that the Respondent received the deposit, being according to Mr Anderson, sometime in August 2013. The Respondent was then said to have forgotten about the matter.

Mr Anderson pointed out that the Respondent was not a professional landlord and this was indeed the only investment property that she had ever let out. The Respondent let the Property out while trialling a new relationship with Mr Anderson (who subsequently became her husband) and she had retained it for a degree of independence and security.

Mr Anderson pointed out that the Property had since been sold meaning that the Respondent now had no involvement at all in the private rental sector. Mr Anderson

also suggested that the Respondent had been an excellent landlord and the rent charged during the tenancy was less than the market value.

The Tribunal asked Mr Anderson questions to ensure that the Tribunal properly understood the factors which Mr Anderson wished to be considered by the Tribunal as providing mitigation for the breach of Regulation 3.

Submissions on behalf of the Applicant.

Ms Rachel Stuart pointed out that there had actually been tenants in the Property before the Applicant's tenancy began meaning that the situation was not quite as described by Mr Anderson. Mrs Stuart also described the impact on the Applicant of not having her deposit protected and the Tribunal asked Ms Stuart about the Applicant's personal circumstances.

The Tribunal put some of the points raised to Mr Anderson and everyone had the right to reply to what had been said. Parties were then invited to make closing submissions.

Having heard from parties and having considered the Application and all the information submitted, the Tribunal then adjourned to consider its decision.

The Tribunal considered the following facts to be established:

Findings in fact

- I. *The parties entered into a tenancy that was stated within the tenancy agreement itself as commencing on 17 August 2013;*
- II. *The Applicant was the tenant and the Respondent was the landlord;*
- III. *The Applicant moved into the Property a few days before the stated commencement date of 17 August 2013;*
- IV. *The Applicant paid a deposit of £500.00 to the Respondent that ought to have been placed into an approved scheme in terms of Regulation 3;*
- V. *The Respondent was aware of her obligations under the Regulations but failed at any point to register the deposit which was unprotected for a period of in excess of 8 years;*
- VI. *The Respondent sold the Property with the Applicant as a sitting tenant in or around October 2021;*

- VII. *At this point, the Applicant discovered that the deposit had never been registered in an approved scheme;*
- VIII. *The Respondent has had health issues which have required significant treatment over a sustained period of time;*
- IX. *The Respondent has failed to adequately put forward evidence as to how these health issues could reasonably be said to justify the non- registration of a deposit for such a substantial period;*
- X. *The Respondent appears at no time to have apologised or shown any particular humility in acknowledging that the deposit should have been protected but wasn't;*
- XI. *The Respondent appears to have neglected to consider taking any independent advice or outsourcing matters to a suitably qualified third party who might have been able to assist the Respondent in discharging her legal duties;*
- XII. *The Respondent may very well have considered herself to have been a "good" landlord and the rent may very well have been set at a fair level but this does not fall to be considered as relevant mitigation for the purposes of determining what, if any, award should be made under Regulation 10.*

Reasons for Decision

Having made the above findings in fact, the Tribunal conducted a judicial exercise in assessing what award, if any, should be made in favour of the Applicant consequent to the Respondent's breach of Regulation 3.

Having done so, the Tribunal decided to award the Applicant a sum equal to three times the amount of the deposit itself, meaning that the Respondent is ordered to pay the sum of £1,500.00 to the Applicant. The Tribunal did not consider that the facts put forward on behalf of the Respondent presented relevant mitigation that ought to reduce any award made and the Tribunal considered that this sum was an appropriate award taking account of the whole facts and circumstances of the Application.

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.

Andrew McLaughlin

Legal Member/Chair

Date: 29th March 2022