



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section under Section 16 of the Housing (Scotland) Act 2014 on an application made under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/23/0224

Re: Property at Flat B, 11 Lenzie Way, Glasgow, G21 3TB (“the Property”)

Parties:

Mr Viren Singh Rathore, Mr Kunal Verma, Mr Habibulla Abdul and Mr Vijay Mathur, all 24 Lenzie Place, Glasgow, G21 3TZ (“the Applicants”)

Mr Wang Chi Royal Lee, 30 Bracken Street, Glasgow, G22 6LY (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted without a Hearing and made an Order for Payment by the Respondent to the Applicants of the sum of Three Thousand Pounds (£3,000).

Background

1. By application, received by the Tribunal on 24 January 2023, the Applicants sought an Order for Payment in respect of the failure of the Respondent to comply with Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicants’ complaint was that the Respondent had failed to lodge their deposit of £2,000 in an approved tenancy deposit scheme. The Applicants were seeking an Order for Payment of the full amount of the deposit and a penalty of up to the maximum possible extent.
2. The application was accompanied by a copy of a Tenancy Agreement between the Parties, commencing on 24 September 2022 at a rent of £1,500 per month, with a deposit of £2,000. The Tenancy Agreement purported to be a Short

Assured Tenancy ending on 8 September 2023, but such a tenancy can no longer be created and the tenancy is, therefore, a Private Residential Tenancy in terms of the Private Housing (Tenancies) (Scotland) 2016 and the purported termination date is irrelevant. The Applicant also provided with the application confirmation emails from SafeDeposits Scotland (6 January 2023), and Mydeposits Scotland (6 January 2023), two of the three approved tenancy deposit schemes, that the deposit had not at any time been lodged with them. The Letting Protection Service Scotland (“LPS Scotland”), the third approved scheme, stated in an email of 9 January 2023 that they had been unable to locate the Applicant Mr Vijay Deepak Mathur, who had raised the enquiry with them, on a deposit. They asked him to ensure “the lead tenant” contacted them.

3. The Applicants included with the application copies of a letter to the Respondent, undated, but confirming that the Applicants had vacated the Property on 23 December 2022 “on your full inspection” and that the Respondent had not provided them with a deposit account number for the £2,000 deposit that they had paid “upon multiple requests.”
4. On 10 March 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 31 March 2023.
5. The Respondent submitted written representations on 31 March 2023. He provided copies of the Tenancy Agreement and of a previous tenancy agreement between him and the Applicants, Messrs Abdul, Rathone and Verma, and evidence from LPS Scotland that they had repaid to him in full the deposit of £1,500 on 15 February 2023. He stated that the deposit had been lodged with LPS Scotland when the first tenancy started, with Mr Verma named as the lead tenant. When the new tenancy began on 24 September 2022, he had been unable to contact Mr Verma, having tried over a period of a month to do so by WhatsApp, phone calls and text messages. He believed that he had returned to India. As a result, he was unable to release the £1,500 deposit, as the recipient email was in the name of Mr Verma, and the Respondent was unable to lodge the additional deposit online with LPS or to add a new tenant. The Applicants had moved out of the Property on 23 December 2022, before the agreed tenancy term of one year to 23 September 2023. They had not given 28 days’ notice. The Respondent had told the two Applicants who were in the Property when it was inspected by him on 23 December 2022 that they would lose the whole deposit as they were in breach of contract. He had repeated this to the Applicant, Mr Mathur, on the same day. The Applicants had caused damage to the Property, and the Respondent provided a spreadsheet listing various alleged items of disrepair and the costs incurred by him in remedying them. He contended that he was entitled to recover these costs and also the rent for the period to 23 September 2023, a further £11,500. After a long reviewing procedure, LPS Scotland had returned the full deposit of £1,500 to him, “compensating our loss both in damages and rent arrears.”

Case Management Discussion

6. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 19 April 2023. The Applicants, Messrs Mathur, Verma and Rathore, and the Respondent were present.
7. The Applicant, Mr Mathur, advised the Tribunal that he had not contacted LPS Scotland again after they emailed him on 9 January 2023, but added that he had contacted the Respondent on multiple occasions to ask for the deposit reference number. In August 2022, the then three tenants had approached the Respondent regarding a fourth tenant moving in. The Respondent had agreed, provided the rent was increased from £900 to £1,500 and the deposit from £1,500 to £2,000. After the new tenancy began, however, the Applicants decided that the rent was unaffordable and, as a result, they told the Respondent they were intending to leave. The Applicant, Mr Verma, had not left the country and was easily contactable. The Applicants did not know that Mr Verma was regarded by LPS Scotland as the lead tenant, because the Respondent had not told them where the deposit of £1,500 was lodged in 2021 or where the additional deposit of £500 was lodged. They had told the Respondent on 13 October 2022 that they were unable to afford the increased rent and he had sent them messages confirming that they could leave if they found replacement tenants. When they did so, however, he had said that the rent would now increase to £2,100 and the deposit to £3,150. As a result, they left the Property.
8. Mr Mathur told the Tribunal that the Respondent had not given the Applicants any notice regarding the list of items of disrepair, so they had not been given any opportunity to challenge them.
9. The Respondent told the Tribunal that he could not agree to new tenants without taking up references and carrying out credit checks.

Findings in Fact

- The Applicants Messrs Abdul, Rathore and Verma entered into a lease of the Property on 24 September 2021. The rent was £900 per month, with a deposit of £1,500.
- The Respondent lodged the deposit of £1,500 with LPS Scotland. The date on which it was lodged is unknown.
- The Respondent did not provide the tenants under the lease with information confirming the name and contact details of the scheme administrator of the tenancy deposit scheme to which the deposit had been paid.
- The tenancy ended on 23 September 2022.
- The Parties entered into a new lease of the Property which commenced on 24 September 2022.
- A tenancy deposit balancing payment of £500 was paid to the Respondent.
- The Respondent failed to lodge this sum in an approved tenancy deposit scheme at any time during the tenancy.
- No part of the deposit has been repaid to the Applicants.

Reasons for Decision

10. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to enable it to determine the application without a Hearing.
11. Under Regulation 3(1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“The 2011 Regulations”), a landlord must, within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme. Under Regulation 10, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal **must** order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit. Regulation 42 of the 2011 Regulations requires a landlord to provide certain information to tenants, including the name and contact details of the scheme administrator of the tenancy deposit scheme to which the deposit has been paid.
12. The background to the present case is that, in September 2021, three of the four Applicants entered into a Tenancy Agreement with the Respondent at a rent of £900 per month, with a deposit of £1,500. The deposit was lodged by the Respondent with LPS Scotland. In 2022, the four Applicants entered into a Tenancy Agreement with the Respondent at a rent of £1,500 per month and with a deposit of £2,000. The understanding of the Parties was that the Applicants would pay the Respondent £500, which he would add to the deposit already paid. The Applicants were unaware that this was held by LPS Scotland. The Respondent’s position is that he attempted to lodge the additional deposit of £500 with LPS Scotland using their online system but was unable to do so or to add the name of the additional tenant, Mr Mathur.
13. The Tribunal held that the original tenancy ended on 23 September 2022. In relation to that tenancy, the Respondent correctly lodged the deposit of £1,500 with LPS Scotland, but he failed to comply with the duty imposed by Regulation 42 of the 2011 Regulations to provide the tenants under that lease (3 of the present Applicants) with information regarding the deposit scheme to which it had been paid. As a result, the tenants under that lease did not know it was lodged with LPS Scotland. The Tribunal accordingly held that the Respondent had failed to comply with Regulation 42 at that time.
14. When the tenancy ended, the Parties appear to have agreed that the deposit could be “rolled over” into the new tenancy, and a further £500 was paid by the Applicants to the Respondent. The Respondent says that he was unable to deal with the release of the original deposit because LPS Scotland had Mr Verma as the lead tenant and he could not contact him. As a result, he could not “roll over” the £1,500 into a new deposit and add the £500.
15. The Tribunal was not persuaded by this argument. The tenancy which began on 24 September 2022 was an entirely new tenancy, with an additional tenant, increased rent and an increased deposit, so it would have been necessary to

withdraw the deposit of £1,500, with the agreement of the tenants, and lodge it in a new deposit account. If he was unable to contact Mr Verma (which was disputed by the Applicants), he should have contacted the other two tenants from the original lease, in order to seek a solution. He should also have lodged the additional deposit of £500 with LPS Scotland in a new account by reference to the new Tenancy Agreement. Accordingly, the Tribunal held that the Respondent had failed to comply with Regulation 3(1) of the 2011 Regulations in relation to the tenancy which began on 24 September 2022 and that he had also failed to comply with Regulation 42, by failing to provide the prescribed information to the Applicants. His failure to progress his initial effort to agree release of the original deposit and the lodging of that sum in a new account meant that the entire deposit of £2,000 was at risk.

16. The view of the Tribunal was that, by failing to lodge the balance deposit with an approved tenancy deposit schemes and by failing, despite requests from the Applicants, to provide details of the lodging of the original deposit with LPS Scotland, the Respondent had denied the Applicants the essential safeguard provided by the 2011 Regulations, namely the right to have had any claim made by the Respondent against the deposit determined independently by a tenancy deposit scheme administrator, when the tenancy ended. The Respondent might or might not have been justified in wishing part of the deposit to be paid over to him. This would have been determined by the company holding the deposit, had he complied with the requirement to lodge it.
17. It is not part of the Tribunal's remit in such cases as this to speculate on the possible decision that might have been arrived at by a tenancy deposit scheme, so the Tribunal made no findings as to whether any deductions might have been justified. The role of the Tribunal is to determine the level of sanction to be applied, having taken into account all the evidence before it. In the present case, the Tenancy Agreement stated that the deposit of £2,000 would be lodged with an approved tenancy deposit scheme. The Respondent did not lodge the additional £500, and the original deposit of £1,500 related to a tenancy which had ended. The onus was on the Respondent to ensure that £2,000 was lodged, with reference to the second Tenancy Agreement, and the required information provided to the Applicants. He should have pursued with LPS Scotland and with all the tenants under the original tenancy agreement, the matter of how the deposit of £1,500 might be satisfactorily dealt with. It was not acceptable that he simply represented to LPS Scotland that the "lead tenant" could not be found/
18. The consequences of this failure were very significant for the Applicants. They did not know if and where the original deposit or the additional £500 had been lodged and the Respondent did not, when asked by them, provide the details necessary for them to confirm the position with LPS Scotland. They did not, therefore, know that the Respondent was in discussion with LPS Scotland regarding having the original deposit repaid to him on the basis of alleged damage caused by them and he did not provide them with notice of any such claim for damage. The Tribunal noted that LPS Scotland, in response to a "round-robin" enquiry to all the approved tenancy deposit schemes, told the Applicant, Mr Mathur, that they had no record of his name and that he should

ask the lead tenant to contact them, but there was nothing in that email which might reasonably have been expected to lead him to believe that they did in fact hold the deposit for the original tenancy. He was the “new” tenant and the failure of the Respondent to lodge the deposit with details of the new Tenancy Agreement meant that LPS Scotland had no record of him.

19. Having considered all the facts and circumstances of the case, the Tribunal decided to order the Respondent to pay to the Applicants the sum of £3,000. This was a figure that the Tribunal regarded as fair, proportionate and just, taking into account the stress and inconvenience and loss of opportunity caused to the Applicants by the Respondent’s failure to lodge the deposit as required by law. The Tribunal took into account the fact that there was £1,500 lodged with LPS Scotland, but this related to a tenancy which had come to an end on 23 September 2022 and, for the purposes of this Decision, the Tribunal had to conclude that the failure to lodge the deposit in the second Tenancy Agreement applied to the whole stated deposit of £2,000 and not merely to the additional sum of £500. Accordingly, the maximum sum that the Tribunal could have ordered the Respondent to pay was £6,000.

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.

George Clark

Legal Member/Chair

19 April 2023

Date