



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/PR/22/0154

Re: Property at 75 Park Road, Falkirk, FK2 7PU (“the Property”)

Parties:

Mrs Carrie Gault and Mr Stephen Gault, 75 Park Road, Falkirk, FK2 7PU (“the Applicants”)

Mr Gordon Brookes, 8 Carrongrange Grove, Larbert, Falkirk, FK5 3DX (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent failed to comply with his duty as a Landlord in terms of Regulations 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) as amended by The Housing (Scotland) Act 2014 (Consequential Provisions) Order 2017 by failing to pay the Applicants’ Tenancy Deposit to the scheme administrator of an Approved Tenancy Deposit Scheme grants an Order against the Respondent for payment to the Applicants of the sum of ONE THOUSAND SEVEN HUNDRED AND TWENTY SEVEN POUNDS AND FIFTY PENCE (£1727.50) Sterling.

Background

1. This is an Application dated 19 January 2022 for an order for payment for where it is alleged the Respondent has not paid a deposit into an approved scheme under the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Application is made under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The Application was accompanied by a copy of a Short Assured Tenancy Agreement between the Applicants and the Respondent commencing on 13 November 2015, text messages between the parties and a copy of a Certificate from My Deposit Scotland. The Applicants also then lodged a copy bank statement from November 2015.
3. On 7 February 2022, the Tribunal accepted the Application under Rule 9 of the Regulations 2017.
4. On 1 March 2022 the Tribunal enclosed a copy of the Application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 19 April 2022. The Respondent required to lodge written submissions by 22 March 2022. This paperwork was served on the Respondent by William Wywalec, Sheriff Officer, Kirkcaldy on 2 March 2022 and the Execution of Service was received by the Tribunal administration.
5. The Respondent’s solicitor Ms Hoey from Messrs Jones Whyte solicitors lodged written representations together with text messages and an email on 22 March 2022.

Case Management Discussion

6. The Tribunal proceeded with the Case Management Discussion (“CMD”) on 19 April 2022 by way of teleconference. The Applicants both appeared with Mrs Gault speaking on behalf of both Applicants. Ms Hoey from Messrs Jones Whyte appeared on behalf of the Respondent.
7. The Tribunal had before it the Short Assured Agreement between the parties dated 13 November 2015, copy text messages between the parties, Certificate from My Deposit Scotland dated 9 August 2021, a copy of the Applicants’ bank statement from November 2015 and an email from the Respondent dated 7 February 2017. The Tribunal noted the content of these documents.
8. The Tribunal stated that it had read through the Application, the subsequent submission with the bank statement from the Applicants and the written submissions from the Respondent. It appeared to the Tribunal that there was no dispute that the Short Assured Tenancy commenced on 13 November 2015, the tenancy deposit of £675 in terms of Clause 6 of the tenancy agreement was paid by bank transfer on 3 November 2015 by the Applicants to the Respondent, that the deposit was not paid to My Deposits Scotland until 9 August 2021 and that the tenancy was continuing. These facts were agreed by both parties.

9. On behalf of the Applicants, Mrs Gault submitted their deposit was unprotected for a long period of time. They had also not received any information from the Respondent in terms of Regulation 42 of the 2011 Regulations to advise where the deposit was held. She had not made enquiries about that at the time. When the fact the deposit had not been paid to a scheme administrator came to light the Applicants were concerned. The bank statement lodged showed they had paid the Respondent the deposit on 3 November 2015 by bank transfer. She could not understand why the Respondent had not automatically then just been transferred to My Deposit Scotland at the time rather than taking cash out and placing it in an envelope to go undiscovered for years.
10. The Tribunal asked Ms Hoey what the Respondent's position was, noting that the written submissions lodged on his behalf was that he had stated he had not acted with any malice or ill content. She reiterated the written submissions lodged. The Respondent had managed 7 properties and he was in the practice of taking deposits, putting them in an envelope and then paying the cash into a deposit scheme. That was the process the Respondent had always followed. He managed 2 properties at the moment. He had not provided any other explanation as to why, when the deposit had been paid by bank transfer, there was any need to withdraw that money, place cash in an envelope and then pay it into an approved scheme or why it had taken so long for the envelope then to be found.
11. When asked what order the Tribunal should make against the Respondent she submitted that two times the deposit, namely £1350, would be a fair amount. She asked that the Tribunal take into account that there was damage to the Property as set out in the written submission. The Tribunal made it clear that if there was any damage to the Property that was a matter for the scheme administrator to determine at the end of the tenancy and was not a matter that could be considered by the Tribunal in the context of the Application.

Findings in Fact

12. The Applicants entered into a Short Assured Tenancy Agreement with the Respondent on 13 November 2015 to rent the Property. They paid the Respondent the £675 deposit on 3 November 2015 in terms of Clause 6 of the said tenancy agreement by bank transfer.
13. The Respondent did not lodge the deposit within 30 working days of 13 November 2015 into an approved scheme. The Respondent lodged the Applicants' deposit with My Deposit Scotland on 9 August 2021.
14. The deposit was not protected in accordance with the 2011 Regulations for a period of over 5 and a half years.

15. The tenancy is continuing.

Reasons for decision

16. For the purpose of Regulation 9(2) of the 2011 Regulations an application where a landlord has not paid a deposit into a scheme administrator must be made within three months of the tenancy ending. The Tribunal found that the application was made in time, as the tenancy is continuing.

17. Regulation 3 (1) and (2) of the 2011 Regulations provides –

“(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.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

The Respondent accepts the deposit was not paid until after the statutory 30 working days. It was not paid into a scheme until over 5 and a half years after it should have been.

18. The 2011 Regulations were intended, amongst other things to put a landlord and a tenant on equal footing with regard to any tenancy deposit and to provide a mechanism for resolving any dispute between them with regard to the return of the deposit to the landlord or tenant or divided between both, at the termination of a tenancy.

19. The amount to be paid to the Applicants is not said to refer to any loss suffered by the Applicants. Accordingly, any amount awarded by the Tribunal in such an application cannot be said to be compensatory. The Tribunal in assessing the sanction level has to impose a fair, proportionate and just sanction in the circumstances, always having regard to the purpose of the 2011 Regulations and the gravity of the breach. The Regulations do not distinguish between a professional and non-professional landlord such as the Respondent. The obligation is absolute on the landlord to pay the deposit into an Approved Scheme.

20. In assessing the amount awarded, the Tribunal has discretion to make an award of up to three times the amount of the deposit, in terms of Regulation 10 of the 2011 Regulations.

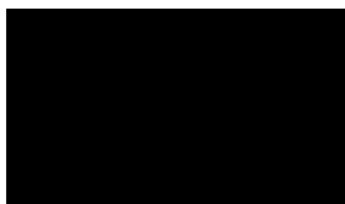
21. The Tribunal considered the Respondent had admitted his failure to comply with the 2011 Regulations. However the Tribunal could not understand why the Respondent had not offered any reason that the placing of cash into an envelope for each of his tenants deposits was necessary over 3 years after the 2011 Regulations had come into force and why he had not offered any explanation as to why this process did not include the automatic payment of deposits from his own bank account to one of the three scheme administrators within the 2011 Regulations. There was no explanation as to why if this was a genuine mistake the envelope with the cash took so long to be discovered by the Respondent. The actions and processes of the Respondent struck the Tribunal as demonstrating that the Respondent had either disregarded or ignored his duties under the 2011 Regulations, which he should have been aware of having managed 7 properties. It was of concern that the deposit had been unprotected for most of the tenancy and for a period of over five and a half years.
22. Despite the Tribunal being satisfied that the Respondent had failed to comply with his duties under Regulations 3 (1) of the 2011 Regulations, the purpose of the 2011 Regulations had not been defeated. The Respondent had now paid the deposit into an approved scheme, the deposit was protected through the remainder of the tenancy and the Applicants had not been inconvenienced by the late lodging. Both parties would be given the opportunity to make their respective claims on the deposit at the end of the tenancy through My Deposits Scotland.
23. In all the circumstances, the Tribunal considered that a fair, proportionate and just amount to be paid to the Applicants was two and a half times the amount of the deposit.

Decision

24. The Tribunal accordingly made an Order for Payment by the Respondent to the Applicants of £1727.50.

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

19 April 2022

Date