



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

Chamber Ref: FTS/HPC/PR/22/0753

Re: Property at 12/6 Restalrig Road South, Edinburgh, EH7 6LD ("the Property")

Parties:

Miss Alejandra Manzano and Miss Sandra Pino Galisteo, 80/3 Canongate, Edinburgh, Midlothian, EH8 8BZ ("the Applicants")

Mr Rim Bahadur Tamang, 8 Stenhouse Avenue West, Edinburgh, EH11 3ER ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member)

Decision

At the Case Management Discussion ("CMD") on 30 May 2022 which took place by telephone conference the Applicants and the Respondent were in attendance.

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

Background

The following issues are not in dispute between the parties:-

- The Respondent leased the Property to the Applicants in terms of a Tenancy Agreement that commenced on 13 September 2021 ("the Tenancy Agreement").
- At the outset of the Tenancy Agreement the Applicants, at the request of the Respondent, paid to the Respondent a deposit of £875. That sum was paid by bank transfer on or around 13 September 2021.
- The Applicants vacated the Property on 6 March 2022.
- The Respondent did not, at any point during the tenancy or subsequently, pay the deposit into an approved scheme as required in terms of Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations").

- At the end of the Tenancy Agreement, the Respondent refunded to the Applicant £725 of the deposit and retained the balance of £100. The refund took place by bank transfer on 9 March 2022.

The Case Management Discussion

In addition to the application, the Tribunal had regard to the following oral submissions:-

For the Applicants –

- i. With regard to the balance of the deposit of £100 retained by the Respondent this related to three issues –
 - a. The Respondent advised the Applicants that the shower needed a deep clean. However, the Applicants had left the shower clean but the shower had blocked three times during the period of the tenancy.
 - b. There was a problem with the gas boiler. The Applicants were expecting an engineer to install a Smart meter. However, on 8 February 2022 the engineer left a notice to the effect that the boiler was dangerous and he disconnected it. The Applicants had no heating and had to obtain heaters.
 - c. The Respondent said the Applicants had not given sufficient notice of leaving the Property.
- ii. The Applicants checked and the deposit had not been lodged in any approved scheme.
- iii. On 9 March the Applicants notified the Respondent about the Regulations and said that they would pursue a Tribunal application. The Respondent replied “go ahead”.

For the Respondent –

- i. That after receiving the deposit the Respondent went to visit his mother in Nepal.
- ii. On being pressed by the Tribunal as to whether he was aware of the Regulations he said “not exactly”. The Respondent said that if he was aware of the Regulations he would have paid the deposit into an approved scheme.
- iii. He has only rented out the Property since September 2021, the Applicants being the first tenants.
- iv. That he rents out one other property in Edinburgh and has done so since 2019. His cousin lives there. He has not taken any deposit.
- v. He is employed as a chef.
- vi. He has not taken advice on renting out the properties but will now hand to an agency to manage on his behalf.
- vii. He said he was first aware of the Regulations when the Tribunal papers were served but later accepted he had been notified of them by the Applicants on 9 March 2022.

Reasons for Decision

The Tribunal takes a landlord’s failure to comply with the Regulations very seriously.

In terms of Regulation 10 of the Regulations it is stated:-

“If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal -

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit;”

Having admitted a breach of the Regulations the Tribunal is obliged to make an order against the Respondent.

In determining the amount payable by the Respondent to the Applicants the Tribunal took into account the following:-

- i. That the Respondent ought to have been aware of the Regulations.
- ii. That the Applicants' deposit was unprotected for the entire duration of the tenancy.
- iii. That the Applicants were deprived of the adjudication process operated by an approved scheme operating under the Regulations relative to the return of the deposit.
- iv. That the Respondent's failure to comply with the Regulations is not excusable.
- v. That the Respondent has two properties and is has only take one deposit, namely the deposit which is the subject of this application.
- vi. That the Respondent refunded to the Applicants £775 of the deposit promptly after their removal from the Property.

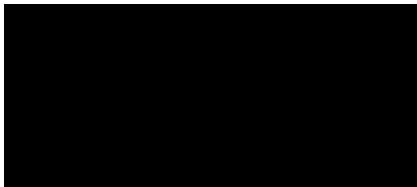
The Tribunal therefore determined that, having regard to the foregoing, the Respondent must pay to the Applicant a sum of £875 by way of a penalty for his failure to comply with the Regulations, being the one times the deposit. Such a penalty is proportionate, fair and just in the circumstances.

Decision

The Tribunal ordered the Respondent to pay to the Applicants £875

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/Chair

30 May 2022
Date