



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

Chamber Ref: FTS/HPC/PR/22/3173

Re: Property at Flat 67 Castle Court, 44 Broomburn Drive, Newton Mearns, G77 5JH (“the Property”)

Parties:

Ms Lai Ki Soon, 112D Fenwick Drive, Barrhead, G78 2PT (“the Applicant”)

Ms Sophia Rafique, Flat 67 Castle Court, 44 Broomburn Drive, Newton Mearns, G77 5JH (“the Respondent”)

Tribunal Member:

Karen Kirk (Legal Member)

1. This Hearing was a Case Management Discussion (hereinafter referred to as a “CMD”) fixed in terms of Rule 17 of the Procedure Rules and concerned an Application under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (hereinafter referred to as “the Deposit Regulations”). The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained and it was understood a final decision could be made. The hearing took place by videoconference.

2. Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £2100 in terms of Regulation 10(a) of the Regulations should be made.

3. Attendance and Representation

The Applicant was present and unrepresented.

The Respondent was present and unrepresented.

4. Background

- This application previously called as a Case Management Discussion. The Tribunal adjourned that Case Management Discussion on the basis that the Applicant sought time to consider additional representations of the Respondent that were lodged late.
- The Tribunal also wished to consider if this application and the Respondent's application for civil proceedings in regards the tenancy under reference number FTS/HPC/CV/22/4328 should call together.

5. Preliminary Matters

- Following the adjournment and prior to this hearing the Applicant confirmed she would need a language interpreter and to have the hearing in person or by video to assist her participation. The Tribunal sought the views of the Applicant.
- The Tribunal noted that the civil proceedings application between the parties under reference FTS/HPC/CV/22/4328 was proceeding separately and a Case Management Discussion had been fixed to take place on the 15th May 2023.
- The Applicant raised that she had only received notification of photographs of the property that the Respondent sought to lodge in the last few days and she objected to them as they were she considered taken without permission.
- The Respondent had on the day before the hearing sought to lodge further video evidence regarding the property. The Tribunal discussed with the Respondent the relevance of evidence relating to her view that that the property had been left in a poor condition by the Applicant to this application relating to the Tenancy Deposit regulations. The Respondent said that she wished to rely on the evidence she had lodged regarding the condition of the property for the civil proceedings application only. She had lodged the photographs and sought to lodge video evidence in this application in the event that the applications were to be dealt with together.
- Both parties agreed the Tribunal did not require to deal with the photographs or the late video evidence sought to be lodged on the basis that it was not relevant to this application.

There were no other preliminary matters raised by any party.

6. The Case Management Discussion

- The Applicant set out her position for the purpose of the CMD summarised as follows;
 - She said she had entered into the tenancy for the property on 26th January 2021. She had paid 6 months rent in advance but had also paid a deposit of £1400.
 - The tenancy ended on 2nd July 2022. After the tenancy ended she became aware that the deposit had not been secured in a tenancy deposit scheme and the deposit had been returned directly from the Respondents personal account. She became aware this was contrary to the law and she could seek compensation.
 - The Applicant said she sought an order from the Tribunal for 3 times the deposit.
- The Respondent set out her position for the purpose of the CMD summarised as follows;
 - The Respondent said she agreed that she had not secured the tenancy deposit in terms of the regulations.
 - Her position was that at the commencement of the tenancy she was suffering from depression. She was under considerable stress as she had been made redundant and was seeking to rent out her home to allow her to move to London. This was to allow her son to take up an opportunity there.
 - The Respondent referred to GP information she had lodged confirmed she was suffering from ill health at the time when the tenancy deposit ought to have been secured.
 - The Respondent said some 8 months later she decided to relocate back to Glasgow and she had started the process to recover her property. She returned in full the deposit to the Applicant at the end of the tenancy despite concerns she had about the condition of the property.
 - The Respondent said that she was no longer registered as a landlord and had no other rental properties or plans again to rent out her home or any other property.

7. Agreed Facts

- Parties agreed the Tenancy commenced on 26th January 2021.
- Parties agreed the Tenancy Agreement referred to a deposit which was to be paid for the property.
- Parties agreed the Applicant paid a deposit of £1400 to the Respondent at the start of the Tenancy.

- Parties agreed that the Respondent did not as required register the tenancy deposit in connection with the property within 30 days of commencement of the Tenancy.
- Parties were in agreement that at no point did the Respondent secure the deposit within an approved scheme.
- Parties agreed that the Applicant left the property on 2nd July 2022.
- Parties agreed the Respondent returned the full deposit at the end of the tenancy.

8. Reasons for Decision

1. Rule 17 of the Procedure Rules provides that a Tribunal can do anything at a CMD which it may do at a Hearing, including making a decision. The Legal Member was satisfied that the Tribunal had everything before it that it would require in order to make a decision having regard to the Overriding Objective. The sufficiency of facts agreed by parties allowed a decision to be made. No further evidence which would be relevant was not already before the Tribunal was referred to by parties as necessary. Parties were in agreement that a decision be made at the CMD. Much of the evidence relating to the condition of the property was not relevant to determination of this application.
2. The Application was brought timeously in terms of regulations 9(2) of the Deposit Regulations.
3. A Private Residential Tenancy was in place between parties dated 26th January 2021. Same ended on 2nd July 2022.
4. The Applicant paid a deposit of £1400 at the commencement of the said PRT.
5. In terms of Deposit Regulation 10 if the FTT is satisfied that the landlord did not comply with any duty detailed in Regulation 3 then the FTT must order a landlord to pay the tenant or tenants an amount not exceeding three times the amount of the tenancy deposit.
6. The FTT was satisfied that the Respondent did not register the deposit with a deposit protection scheme as required by Regulation 3. The Applicant had lodged written evidence from the safe deposit schemes confirming same and confirmation the deposit was returned directly from the Respondent. The matter was not disputed by the Respondent who agreed it had not been secured at any point during the tenancy.
7. The FTT was also satisfied that a deposit of £1400 had been paid by the Applicant to the Respondent.
8. If the FTT was satisfied a breach of the regulations had occurred the FTT had to make an order in terms of Regulation 10.
9. In terms of Regulation 10 the FTT is obliged to make an order up to 3 times the deposit of the applicants to the respondent.

10. When considering the Order and level of sanction the FFT must have regard to the severity of the breach and any mitigating factors.
11. The deposit was unsecured throughout the tenancy. The period of insecurity was the duration of the tenancy. The Applicant did not receive the deposit until the tenancy had ended. The Applicant has lost the opportunity to determine any issue regarding the condition of the property through a tenancy deposit scheme.
12. In the case of *Jenson v Fappiano* 2015 G.W.D 4-89 in relation to the amount of such an Award under regulation 10 of the Regulations it was noted that a judicial analysis of the nature of the non-compliance was required and a value attached to reflect a sanction which was fair and proportionate and just given the circumstances.
13. It was further noted that the Sheriff said in said case that the value was not the starting point of three times the deposit minus the mitigating factors it was what was fair and proportionate in the exercise of balanced judicial discretion.
14. The Court of Session in *Tenzin v Russell* 2015 Hous. L.R 11 held that any payment in terms of Regulation 10 of the Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.
15. The FTT was therefore of the view that an Award should be made in the lower end of the scale as the deposit had been unsecured throughout the tenancy and the Applicant was not able to benefit from the tenancy deposit scheme in regards any disputes on the condition of the property. The Tribunal also considered that the Respondent's circumstances in particular that she is not now registered as a landlord and had rented her own home out due to personal circumstances. She is not a landlord and has no intentions of renting properties in the future. The Respondent had also lodged medical information confirming she was suffering from stress and depression at the time. The Tribunal took into account all the relevant written representations made by both parties alongside their participation in the video hearing. Accordingly in balancing the circumstances of both parties the Tribunal found the Applicant entitled to an award of 1.5 times the deposit to the sum of £2100.

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.

K. Kirk

5th May 2023

Legal Member/Chair

Date