



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under The Tenancy Deposit Schemes (Scotland) Regulations 2011 as amended and Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/PR/21/2530

Re: Property at Heatherbrae Cottage, 12 Drygatehead, Newmilns, East Ayrshire, KA16 9EQ (“the Property”)

Parties:

Ms Barbara Graham, 52 Fintry Place, South Bourtreehill, Irvine, KA11 1JB (“the Applicant”)

Mr Colin Houston, Heatherbrae Cottage, 12 Drygatehead, Newmilns (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Leslie Forrest (Ordinary Member) (“the tribunal”)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent had not complied with his duties in terms of The Tenancy Deposit Schemes (Scotland) Regulations 2011 as amended and made an order requiring him to pay the sum of £750 to the Applicant.

Background

- 1. This is an application to the Tribunal under Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 as amended (“the Deposit Regulations”).**
- 2. The application is dated 16th October 2021.**
- 3. A case management discussion was held on 16th February 2022.**

4. A Hearing was held on 3rd May 2022. The Applicant participated by video conference and the Respondent by audio conference.
5. Both parties had submitted documents to the Tribunal prior to the Hearing.

Matters Agreed

6. The Respondent was a tenant in the Property from 1st August 2021 until 20th November 2021.
7. Monthly rent payable in respect of the tenancy was £550.
8. The Respondent sent a tenancy agreement to the Applicant which she did not sign.
9. On or around 30th July 2021, the Respondent paid the sum of £1100 to the Applicant.

Issues Identified at the Case Management Discussion

10. The Applicant's position was that she paid one month's rent at the commencement of the lease together with the deposit of £550.
11. The Respondent's position was that the verbal agreement he had with the Applicant was that he would receive payment of two months' rent at the commencement of the tenancy and that he thought that this was what had been paid to him.
12. The Respondent had lodged confirmation from my deposits Scotland that he had registered with them on 23rd July 2021 and, in his written representations, he suggested that this was vouching to confirm that he intended to lodge the tenancy deposit with the scheme whenever he received it.

The Hearing

13. The Applicant said that she had paid the sum of £550 at the commencement of the tenancy in respect of rent and that she had paid the deposit of £550 at the same time.
14. In support of her position, the Applicant referred the tribunal to a letter which the Respondent had provided to her and which is dated 31st

August 2021. She said that she required the letter for Universal Credit purposes. The letter stated:

“To Whom it May Concern

This letter is to serve as verification that Barbara Graham is currently residing at 12 Drygatehead, Newmilns, KA16 9EQ and moved into this property on 1st August 2021. The Rental Agreement is for £550 per month.

To date, Barbara paid £550 deposit and the first month’s rent of £550 on 1st August 2021.”

15. The Applicant referred to Whatsapp messages between the Respondent and her:

“30th July 2021- Barbara Graham: Good morning Colin. I’ve paid £550 straight into your account as a deposit and set up a standing order for the same amount....

31st July 2021- Colin Houston: Hi there Barbara. The money went straight in no problems.....”

16. The Applicant referred to the redacted bank statement which she had lodged and which showed a payment of £550 on 2nd August 2021 and a payment of £550 with the legend *“Bill Payment to Colin Houston Reference Deposit.”*

17. The Applicant said that, after the first payment of rent which she made in August 2021, the second payment was made in the beginning of September 2021. She said that, on departure from the Property, the rent was up to date and that the deposit of £550 has not been repaid to her.

18. Ms Graham said that, prior to the tenancy commencing, she had not been in discussion with the Respondent about two month’s rent being paid in advance. She said that, if this had been the agreement, she would have been able to comply with such an arrangement.

19. The Respondent agreed that he had signed the letter confirming the details of the tenancy and that he had received a payment of rent at the beginning of September 2021 which, if two month’s rent had been paid in advance, would not have been due. The Respondent accepted that, in the Whatsapp messages, there had been reference to a deposit having been paid to him at the commencement of the tenancy.

20. The Respondent maintained that he understood that the original agreement was that he would receive payment of two month’s rental in advance. In written submissions, the Respondent had referred to the tenancy agreement which he had provided to the Applicant and which she had not signed. He submitted that the reference in the lease to one

month's rent being paid in advance was wrong and that he had neglected to change it to reflect his understanding that he would receive payment of two month's rent in advance. He accepted that, after the tenancy commenced, he realised that the arrangement he had entered into reflected that one month's rent was paid in advance and that he had received payment of the deposit of £550.

21. The Respondent said that it had never been his intention not to lodge the deposit with an approved tenancy deposit scheme and, in support of this, said that he had registered with my deposits Scotland. He referred the tribunal to an email from the tenancy deposit scheme dated 22nd July 2021 which confirmed that he had registered.

22. The Applicant said that the deposit which she paid to the Respondent had not been returned to her. The Respondent agreed that this was the case and that he could pay it anytime but did not want to do it until the current Tribunal proceedings had been concluded.

23. The tribunal decided that a short adjournment would be appropriate to allow payment to be made and, on re-convening, the Applicant confirmed that the sum of £550 had been paid into her bank account.

24. The Law

The Tenancy Deposit Schemes (Scotland) Regulations 2011

3. (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.

(3) A "relevant tenancy" for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

(a) in respect of which the landlord is a relevant person; and

(b) by virtue of which a house is occupied by an unconnected person,

unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

9. (1) A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—

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

(b) may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to—

(i) pay the tenancy deposit to an approved scheme; or

(ii) provide the tenant with the information required under regulation 42.

Submissions

25. The Applicant said that she had lodged everything she thinks appropriate to be considered by the tribunal and that she was content for it to make an award it considers appropriate.

26. The Respondent accepted that he should have lodged the deposit in a tenancy deposit scheme and he asked the tribunal to accept that, because he had registered with a scheme, it had been his intention to do deal with the deposit in an appropriate manner.

27. In his written submissions, the Respondent referred to personal issues which he had around the time of the commencement of the tenancy and thereafter. He said that he had not been focused. He said that he had not dealt properly with the lease and alluded that he had not realised for some time that he had to register as a landlord. He said that he allowed things to “get on top of him.”

28. The Respondent said that he had purchased the Property as a family home but that his wife decided she did not want to move and that is why he had put it on the rental market. He said that this is the only property he has ever let and that he now resides in the Property.

29. Findings in Fact

- a. The Applicants and the First Respondent were parties to a Private Residential Tenancy Agreement for the Property.
- b. The tenancy commenced on 1st August 2021 and came to an end on 20th November 2021.
- c. The Applicant paid a tenancy deposit of £550 to the Respondent on 31st July 2021.
- d. The tenancy deposit has not been lodged with an approved tenancy deposit scheme.
- e. The tenancy deposit was repaid to the Applicant on 3rd May 2022.

Finding in Fact and Law

The tenancy deposit required to be paid to an approved tenancy deposit scheme by 7th September 2021 which was thirty working days from commencement of the tenancy.

Reasons

30. Some matters were not in dispute: a private residential tenancy for the Property commenced on 1st August 2021 and the tenancy terminated on 20th November 2021.
31. The Applicant's evidence was clear: that she had paid a deposit of £550 at the commencement of the tenancy. The tribunal found her to be credible.
32. The Respondent accepted that he had signed the letter dated 31st August 2021 which stated that a deposit of £550 had been paid by the Applicant. This letter, when considered in conjunction with the extract from the Applicant's bank statement and the Whatsapp messages of 30th and 31st July 2021 were completely supportive of the Applicant's position that she had paid a deposit of £550.
33. The Respondent acknowledged that, whatever verbal arrangement he may have thought that he had, by the beginning of September 2021, he should have accepted that the position was not as he had understood and that he should have dealt appropriately with the deposit which he was holding. It was also significant to the tribunal that the tenancy agreement which the Respondent had lodged was drafted in terms which reflected that a deposit of £550 was to be paid at the outset of the tenancy and that one month's rent was to be paid in advance.

The Sanction

- 34. The creation of regulations to cover tenancy deposits was to protect tenants' funds and provide a structured process of dispute resolution. The Respondent received £550 as a tenancy deposit but did not lodge it with an approved deposit scheme within thirty working days of the beginning of the tenancy. To comply with the tenancy deposit regulations, the tenancy deposit would have required to have been lodged with an approved scheme by 7th September 2021.**
- 35. The Regulations are clear in stating that, where there is a breach such as this, the Tribunal must make an order requiring a Landlord to pay a Tenant a sum not exceeding three times the amount of the tenancy deposit. The amount is a matter of judicial discretion and must reflect what is a fair, proportionate and just sanction, having regard to the purpose of the Regulations and the gravity of the breach. It is a balancing act.**
- 36. In this particular case, the Tribunal noted that the deposit was unprotected throughout the whole of the tenancy.**
- 37. The Tribunal had regard to and adopted the approach of the Court in Russell-Smith and Others v Uchegbu (2016) SC EDIN 64 where the Sheriff had effectively stated there to be two broad aspects to the sanction. The first was consideration of the period of time the deposit was unprotected and the second is a sum to reflect a weighting taking into account the particular circumstances of the case including the landlord's experience etc.**
- 38. The deposit was unprotected for a period of one hundred and twelve days which was all of the tenancy. It is considered that the appropriate starting point for the sanction should be £300.**
- 39. The tribunal accepted that the Respondent was not someone in business as a landlord and could be described as an "accidental landlord." It also accepted that the Respondent was somewhat overwhelmed by the situation he found himself in and that he was having difficulty to cope with his duties as a landlord and personal issues which he had. Notwithstanding that, he was obliged to comply with the tenancy deposit regulations and failed to do so. The tribunal noted that the tenancy deposit had been repaid and accepted the Respondent's explanation for him not doing so prior to the date of the Hearing. The tribunal considered that an appropriate sum when considering this aspect of the application would be £450.**
- 40. The Tribunal determined to make an Order requiring the Respondent to pay the sum of £750 to the Applicant.**

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.

**Martin J. McAllister
Legal Member
3rd May 2021**