

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

Chamber Ref: FTS/HPC/PR/18/2954

Re: Property at Flat 1/1, 1 Lendel Place, Glasgow, G51 1BH ("the Property")

Parties:

Mr Sayed Gillani, Flat 0/2, 48 Clifford Street, Glasgow, G51 1PB ("the Applicant")

Mr Mohammed Sabir, Flat 1/2, 214 Deanston Drive, Glasgow, G41 3JU ("the Respondent")

Tribunal Members:

Martin McAllister (Legal Member) and David Wilson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent did not comply with the duty in Regulation 3 to pay the deposit to the scheme administrator of an approved scheme and ordered the Respondent to pay the Applicant the sum of one thousand five hundred pounds (£1,500) being three times the amount of the tenancy deposit.

Background

This was a Hearing to consider an application under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 for an order under regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (the 2011 Regulations). The tenancy had been terminated and the Applicant had asked for return of the deposit. He had only received £250. Enquiries had been made by a solicitor acting for the Applicant and the application states that the deposit had not been paid into one of the three approved schemes. The Application was received by the Tribunal on 1st November 2018 and the tenancy had come to an end on 4th August 2018.

The Hearing

The Applicant was not present and was represented by Ms Irzum Mahmood, solicitor. The Respondent was present and was accompanied by his son Mr Saleem Sabir.

Preliminary Matters

Mr Sabir said that the Property had been left in a poor condition at the end of the tenancy and that it had been agreed with the Applicant that only half the deposit would be returned. Ms Mahmood disputed this and said that her instructions were that this was not a matter of agreement. She also said that the Applicant and her office had tried to get recovery of the balance of the deposit from the Respondent.

It was pointed out to Mr Sabir that the Hearing was to consider a possible failure to deal properly with the deposit and that any issues about the condition of the Property could not be dealt with at this Hearing.

Mr Sabir said that he and his father had been unaware of the need to lodge a deposit with an approved scheme. He said that this was the only property which his father rented out.

Ms Mahmood said that she wanted the Tribunal to make an order for payment to the Applicant of a sum of £1,500.

Matters of Agreement

It is useful to set out matters agreed between the parties.

1. The Respondent received a deposit of £500 from the Applicant in respect of the property.
2. The Respondent did not lodge the deposit with an approved scheme in terms of regulation 3 of the 2011 Regulations.
3. The Respondent had paid £250 to the Applicant in respect of return of half of the deposit.

Issues

Parties agreed that the tribunal had to determine the level to be paid to the Applicant by the Respondent.

Mr Sabir said that his father did not know about the tenancy deposit arrangements which he had to comply with but that he does now. He said that there is a tenant currently in the Property but that no deposit was paid. He said that this was the only property where his father has a tenant. He said that he had complied with all the other requirements relating to renting out a property and had acquired the necessary knowledge by such means as searching the internet but that this research had not highlighted the need for compliance with the 2011 Regulations. He said that his father had had the Property for some years and that there had been tenants prior to the Applicant.

Ms Mahmood said that the deposit had not been in an approved scheme for the whole of the tenancy

Submissions

Ms Mahmood invited the tribunal to make an award for payment to the Applicant of the sum of £1,500 which represented three times the level of the deposit. She said that the deposit had not been lodged for the whole of the period of the tenancy.

Mr Sabir asked the tribunal to take into account that the Property was the only one his father rented out and that he had been unaware of the need for complying with the 2011 regulations.

Discussion and Reasons

There was no dispute as to salient facts. The Respondent had received a deposit of £500 from the Applicant and had failed to lodge it in an approved scheme. There was disagreement between the parties at the end of the tenancy and, as a result of that, only half the deposit was returned.

Regulation 3 of the 2011 regulations states that " 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.....pay the deposit to the scheme administrator of an approved scheme." This was not done.

The purpose of the 2011 regulations is not just to protect tenancy deposits but also to afford tenants a facility whereby they may have an independent adjudicator to determine issues surrounding return or otherwise of the deposit. The case before us highlights the advantage of a tenant having such an avenue of dispute resolution. Because the deposit had not been lodged, the Applicant was denied an independent assessment of whether or not it was appropriate for the Applicant to retain half the deposit.

We considered matters. Whilst the Respondent's position was that he was unaware of the need to comply with the 2011 Regulations, ignorance is no excuse. He is a person who owns a property and is receiving rental income from it. He is obliged to comply with all matters concerned with being a landlord.

In terms of regulation 10 of the 2011 regulations if satisfied that the Respondent has not complied with regulation 3, we " must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit."

We considered that the application before us was at the more serious end of the spectrum and this was because the deposit had not been lodged during the whole term of the tenancy and there had been a dispute over the return of the deposit which, had the 2011 regulations been complied with, would have afforded the Applicant some avenue of adjudication. We therefore consider it appropriate to make the maximum order possible and that is £1,500.

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.

M McAllister

_____
Legal Member/Chair

Date

11/1/19