

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/PR/18/3090

Rule 103 - Application for an Order for Payment where Landlord has not paid the deposit into an Approved Scheme

Re: Flat 2/2, 237 Bearsden Road, Glasgow, G13 1DH ("the Property")

Parties:

Michael Reilly, Flat 3/2, 101 Cleveden Road, Glasgow, G12 0JN ("the Applicant")

Kim Wilson, 21 Cadder Road, Bishopbriggs, G64 3JJ ("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 her duty as a Landlord in terms of Regulation 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 Applicant of the sum of Seven Hundred and Twelve Pounds and Fifty Pence (£712.50) Sterling.

Background

1. By application dated 9 November 2018 the former tenant/applicant applied to the First-tier Tribunal for Scotland (Housing and Property) Chamber for an order for payment where a landlord has not paid a deposit into an approved scheme in terms of the Tenancy Deposit Schemes (Scotland) Regulations

2011 ("the 2011 Regulations"). The applicant also lodged a copy Short Assured Tenancy with the Respondent, a letter dated 18 September 2018 from Glasgow City Council and a Deposit Summary from Safe Deposits Scotland ("SDS").

2. On 9 January 2019 the Tribunal issued a Notice of Acceptance of the Application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").
3. On 25 January 2019 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 15 February 2019. The Tribunal advised both parties on 25 January 2019 that a Case Management Discussion under Rule 17 of the Regulations would proceed on 19 February 2019. This paperwork was served on the Respondent by Mark Fishman, Sheriff Officer, Glasgow on 29 January 2019. A certificate of execution of service was received by the Tribunal administration.
4. The Respondent did not make any written representations by 15 February 2019.

Case Management Discussion

1. The Tribunal proceeded with the Case Management Discussion on 19 February 2019. The Applicant was not present, but was represented by his father James Reilly. The Respondent appeared personally and was accompanied by her supporter Mr McKeamd.
2. The Tribunal referred parties to the Short Assured Tenancy Agreement between the Applicant and the Respondent in relation to the Property dated 10 and 14 July 2017 ("the tenancy"). The Respondent accepted this was the tenancy agreement she had with the Respondent.
3. The Respondent accepted the tenancy terminated on 12 September 2018 as claimed by the Applicant in the application.
4. In terms clause 1.10 of the tenancy agreement, the Applicant agreed to pay a deposit of £475 before the signing of the tenancy agreement. The Respondent explained a deposit of £475 had been paid by the Applicant together with the first month's rent on 10 July 2017. She paid the deposit and the first month's rent into a separate bank account in her name which related solely to the Property. She accepted she did not pay the deposit into one of the approved tenancy deposit schemes.

5. The Respondent explained to the Tribunal that she only let out the Property which she had had since approximately 2002 – 2003; she had no other properties. She had lived there initially and then started to rent it out in or about 2007, but had never taken a deposit. It was only after she had an experience with the previous tenant who had left the Property in a poor state did she consider taking a deposit. She had been under the impression that she had to pay the deposit into a separate bank account. It was only after the Applicant had vacated the Property and the incoming tenant enquired what scheme the deposit would be lodged with did she carry out some research and realised she should have paid the deposit into an approved scheme.
6. The Respondent explained she had various text message conversations with the Applicant leading up to the termination as she wanted to show a prospective tenant around the Property. She found the Property to be in a mess. There then followed further text messages from the Respondent about how much she would take off the deposit for cleaning. She wanted to sort matters out with the Applicant. There was then an exchange of emails with the Applicant's father in which she produced photographs and set out costs she wanted to deduct from the deposit.
7. Mr Reilly, the Applicant's father and representative confirmed that on the last day of the tenancy there was an agreement reached that £50 would be deducted for cleaning costs, an inspection fee of £25 and the balance for a pre – paid electricity reading of £17.23. However, after the Applicant vacated on 12 September 2018 the Applicant heard nothing further from the Respondent.
8. Mr Reilly also explained he had made enquiries with the Respondent on 24 September 2018 about the return of the deposit. He claimed the Respondent had been evasive and that the tone of her emails was that she would keep the deposit as she was now considering claiming for other items and compiling figures. On 28 September 2018 there was further correspondence with her and on 30 September 2018 he asked her for the tenancy deposit reference number.
9. He claimed the deposit was lodged with SDS on 1 October 2018. The Tribunal considered and referred parties to a Deposit Summary from SDS. This showed £475 was lodged with SDS on 1 October 2019, that the deposit related to the Property and that the tenancy agreement started on 14 July 2017. The Respondent conceded she had not paid the deposit into an approved scheme until she had done so on 1 October 2018.

10. Mr Reilly explained details that the deposit had been paid into Safe Deposits Scotland were only received on 14 October 2018. There had been difficulties at that stage in going through the authentication process as the wrong mobile number had been supplied. He advised that Safe Deposit Scotland are still dealing with the deposit and that the matter is going through the adjudication process.
11. The Tribunal explained to the Applicant that it had no jurisdiction to determine the division of the deposit. The Tribunal however could make a determination under the 2011 Regulations in relation to the Respondent's failure to pay the deposit into an approved tenancy deposit scheme in terms of the 2011 Regulations.
12. The Applicant's representative explained the Applicant had anxiety issues. He felt that he was not being treated fairly by the Respondent and that she would take whatever she wanted from the deposit. The Applicant's representative explained the Applicant had been worried that he would not be able to repay the deposit back to him. He explained that he had paid the deposit for his son to the Respondent on 9 July 2017. He understood the maximum amount that could be awarded by the Tribunal was three times the amount of the deposit. He asked the Tribunal to award two times the amount of the deposit of £475.

Findings In Fact

13. The Applicant lived in the Property between 14 July 2017 – 12 September 2018 in terms of a Short Assured Tenancy with the Respondent. In terms of clause 1.10 of the tenancy agreement the Applicant agreed to pay a deposit of £475 before the start date of the tenancy agreement.
14. The Applicant's father and representative paid the deposit of £475 together with the first month's rent of £475 to the Respondent on or about 10 July 2017.
15. The Respondent paid the deposit immediately into a separate bank account relating to the Property in her own name. The Respondent did not pay the deposit into an approved scheme at that time.
16. By mutual agreement the tenancy agreement came to an end on 12 September 2018.
17. There were various text messages and emails between parties about the return of the deposit in September 2018.
18. On 25 September 2018 the Applicant's father asked the Respondent for the tenancy deposit reference number to enable him to get the return of the deposit.

19. The Respondent paid the deposit to SDS on 1 October 2018. The deposit is now subject to the arbitration process.
20. At no time during the tenancy agreement had the Respondent provided the Applicant with any information about any information about the scheme administrator or where the deposit was held.

Reasons For Decision

21. For the purpose of Regulation 9(2) of the 2011 Regulations the Tribunal found that the application was made in time within 3 months of the tenancy termination. 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.
22. The amount to be paid to the Applicant is not said to refer to any loss suffered by the Applicant. 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.
23. 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.
24. The Tribunal considered that the Respondent's failure was not wilful. However, the Tribunal considered that her failure to pay the deposit into an approved scheme for the whole of the tenancy duration had placed the Applicant at a severe disadvantage at the termination of the tenancy and had resulted in the return of the deposit being delayed. The Applicant had suffered some level of anxiety that the deposit would not be returned to him at all. He had turned to his father to help him. The Tribunal however also noted that the Respondent had correctly admitted her breach of the Regulations and fully accepted responsibility for her failure to do so. The Tribunal noted she had paid the deposit into a separate bank account. The Tribunal noted that the Respondent's explanation for this was that she was unaware of the 2011 Regulations. The Tribunal also noted that the Respondent had paid the deposit into an approved scheme after the tenancy agreement had terminated and that the adjudication process was proceeding.

25. The Tribunal was also concerned the Respondent had failed to comply with her duties under Regulations 3 (1) (b) and 42 of the 2011 Regulations to provide the Applicant with information as to where the deposit was protected.

Decision

26. In all the circumstances, the Tribunal was not inclined to order two times the deposit as requested by the Applicant's representative. The Tribunal considered that a fair, proportionate and just amount to be paid to the Applicant was Seven Hundred and Twelve Pounds and Fifty Pence (£712.50) Sterling being one and a half times the deposit and accordingly made an Order for Payment by the Respondent 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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Ms Shirley Evans

Shirley Evans
Legal Member/Chair

19 February 2019
Date