



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

Chamber Ref: FTS/HPC/PR/19/0029

Re: Property at 2/3 47 Crow Road, Glasgow, G11 7SH (“the Property”)

Parties:

Ms Jessica Shenton, Flat 29, 15 Ibrox Holm Oval, Glasgow, G51 2TX (“the Applicant”)

Mrs Hazel Simpson, Hillcrest, Edinburgh Road, Stranraer, DG9 7HD (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision

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

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment of the deposit in relation to a tenancy for the Property.
2. The application contained ,
 - (a) a copy of the Tenancy Agreement,
 - (b) online banking screenshot - deposit payment
 - (c) whatsapp messages confirming end of tenancy
 - (d) Whatsapp messages confirming that the landlord did not protect the deposit.

3. The Applicant advised that the Respondent had failed to submit the deposit of £650 to an approved scheme.
4. The Applicant attended the case management discussion with James McCallum as a supporter. The Respondent attended the case management discussion with Lorna Simpson.
5. Written representations dated 3 April 2019 had been received from the Respondent prior to the hearing.

The Case Management Discussion

6. The Applicant advised that she was seeking an order as her deposit had not been lodged with any approved scheme. She had also not been provided with all the prescribed information.
7. Parties agreed that the tenancy had commenced on 1 September 2018.
8. That the Applicant had left the property on 3 November 2018 when the tenancy ended.
9. That the tenancy deposit of £650 had been received from the Applicant. That it had been held by the Respondent.
10. It should have been put in an approved scheme on or before 12 October 2018 to comply with the 30 working days' time limit as required by the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations").
11. The Applicant advised that she had viewed the property in August, paid her deposit of £650 to the Respondent in order to secure the property on 17 August 2018. She had signed the tenancy agreement and the tenancy had commenced on 1 September 2018. She noted that she had since discovered that the landlord had given her an old style tenancy and not the new private residential tenancy agreement, and they had purported to offer her the tenancy for a year.
12. On around 25 September the Respondent had advised that they were now intending to sell the property as there was a change in circumstances. They were unclear when it would be sold but asked the Applicant to allow estate agents into market the property. She agreed to allow this. The estate agents had a set of keys. On 12 October 2018 surveyors attended to do a home report, the estate agents also attended to take photographs she advised that it was very stressful residing there with the house moving to be marketed for sale. Therefore the Applicant decided to look for somewhere else to live.
13. She managed to find somewhere and moved out on 3 November 2018. She received her deposit on 13 November. She advised that she had contacted the Respondent on 12 November to ascertain if the deposit had been held tenancy deposit scheme. However her messages had been ignored by the Respondent.

She submitted that her deposit should have been protected. It had not been protected for the 6 weeks before she had received notice of the decision to sell the property.

14. She submitted that there was a lot of confusion about the sale of the property, she was not sure if it was being sold or not. She had asked for the landlords to serve her with a notice to quit in order that she had certainty about what would happen with her tenancy however she had been told that they were too busy to do so. She was told to just take as long as she needed in the property even though they were selling it.
15. The Respondent accepted that the deposit had not been paid into a scheme. They advised that between the time that they received the deposit and decided to put the property up for sale time passed, it was the case that they were always going to give the deposit back.
16. They stated that they made an offer to return the deposit to the Applicant as set out in the email they had submitted to the Tribunal. The Respondent advised that they had made this offer to the Applicant while she was in the property, as she had called in a distressed state one day due to the estate agents turning up at the property without giving her notice. The Respondent advised that they had tried to reassure the Applicant that she would not have to leave the property until she was ready to do so and they had tried to be supportive to the Applicant.
17. The Respondent considered that this application was the Applicant being spiteful as there was no intention not to pay it back and it did not really matter where the deposit had been held it had been repaid. The Respondent accepted that they had not put the deposit into a scheme and to this extent they had been negligent.
18. The Respondent had agreed to waive the one month's notice to quit the property when the Applicant had found a new property and they thought they had acted reasonably.
19. The Applicant advised that the landlord has a duty to place deposits into a scheme and it did not matter if they had one or 100 properties.
20. The Respondents advised that this was the only property that they leased out. They had been landlords for around 5 years. They had no other properties that they leased. They had now sold this property. They advised that they had a vague understanding about the deposit regulations, but stated that they did not treat them with enough respect. They advised that they had taken deposits before, but had never lodged any in a tenancy deposit scheme, they indicated that they had however always returned the deposits. They admitted that they had not responded to the Applicant's question about whether or not the deposit had been put in a scheme.
21. The Applicant considered that being a landlord is a responsible position and if you are not willing to treat it as such you can elect to have letting agents do it for you. She advised that she had not been in touch about the deposit initially to begin with as she had been stressed and overlooked this, due to the property

being sold. At the end of the lease she had expected there to be a few days while the landlord checked the property condition. She agreed that the money had been returned to her on 13 November 2018 and that the Respondent had contacted her about arranging for the repayment of the deposit.

Findings in Fact

22. On the information before the Tribunal I found the following facts to be established:
23. A tenancy agreement was entered into between the Applicant and the Respondent for the property and existed between the parties. It was entered into on 1 September 2018.
24. The Tenancy ended on 3 November 2018.
25. The application to the tribunal had been made on 20 December 2018.
26. Clause 2 deals with rent and deposit. Clause 2 (b) in the lease agreement confirms that £650 is payable as a deposit, the clause goes on to narrate what the deposit can be retained for at the end of the tenancy.
27. Parties agreed that the deposit sum of £650 had been paid by the Applicant and was held by the Respondent.
28. That the deposit had not been paid into an approved scheme.
29. The Respondent had repaid the deposit belonging to the Applicant by 13 November 2018.

Reasons for Decision

30. The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits by landlords for tenants, and relevant to this case are the following regulations:-

Duties in relation to tenancy deposits

- 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.

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.

Court orders

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—

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

31. There was no dispute that there had been breach of the regulations in relation to not placing the deposit into an approved scheme within 30 working days. There also did not appear to be a dispute that all of the prescribed information had not been provided to the Applicant. Therefore the terms of regulation 10 apply and I must make an order not exceeding three times the amount of the tenancy deposit.

32. In considering the penalty to impose I have had regard to the fact that the Respondent did not appear to be aware of their statutory duties imposed by the regulations. They have indicated that they had a vague awareness of the duties but have not taken any time to understand what those were and to ensure that they were discharging them properly.

33. While acting as landlords for around 5 years they have routinely taken deposits and have never lodged any in a deposit scheme.

34. While I note that they indicated in mitigation that they offered the deposit back to the Applicant if she needed it for another flat, this was disputed by the Applicant

and the deposit was not in event returned to her while she still resided in the property. What I found concerning in relation to this submission by the Respondent was that the Respondent appears to be clear that they never had any intention of putting the deposit into an approved scheme.

35. While it could be said the deposit was only unsecured for a relatively short amount of time, this would have been longer had the Applicant not decided to find somewhere else to live after being advised that the Respondent was selling the property.
36. To her credit I found the Respondent to be honest in her answers however, I do not consider that the Respondent fully understands the requirements for placing the deposit in an approved scheme and further, I also found it concerning that she considered that this application was no more than a spiteful action by the Applicant, perhaps had she responded to the whatsapp messages from the Applicant at the end of the tenancy the Applicant may have been satisfied with that response and felt no need to bring the application.
37. I have taken into account the fact that the Respondent is no longer acting as a landlord; has sold the property; and returned the deposit promptly, however this scheme was created to ensure that tenant's deposits were protected and at no time was this deposit protected and further, at no time would it have been protected if the Applicant had remained in the property, and while the Respondent apologised for this failing, it would appear that they still did not appreciate the necessity for placing deposits into approved schemes.
38. Taking all matters into account and having regard to the terms of the application, the written submissions by the Respondent, and the verbal submissions of both parties today, I consider there had been a general disregard for the provisions of the regulations by the Respondent. Acting as a landlord does bring statutory duties and responsibilities, and landlords are required to ensure that these are properly discharged. In this case the Respondent failed to ensure that those duties were properly discharged.
39. As set out above Regulation 10 provides that if I am satisfied that the landlord did not comply with any duty in regulation 3, then I must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.
40. On the basis of the evidence submitted, I consider that I should make an order the landlord to pay the tenant £975 which is 1.5 times the tenant deposit.

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.

Ms Melanie Barbour

Legal Member/Chair

Date

15. 4. 19