



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

Chamber Ref: FTS/HPC/PR/18/3126

Re: Property at Flat 8, 3 Bankwood Drive, Kilsyth, Glasgow, G65 0GZ (“the Property”)

Parties:

Mrs Shiri Salhotra, 39 Hazel Road, Banknock, Bonnybridge, FK4 1LQ (“the applicant”)

Mr Graham Syme, 7 Glenburn Crescent, Milton of Campsie, G66 8DW (“the respondent”)

Tribunal Member:

David Preston (Legal Member)

Decision

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

- **The Respondent had failed in his duty to pay the deposit paid by the Applicant to the scheme administrator of an approved scheme under Regulation 3(1)(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”); and**
- **Orders the respondent to pay to the Applicant the sum of £862.50 in terms of Regulation 10(a).**

Background:

1. **By application dated 25 October 2018 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 and Regulation 9 of the Regulations the applicant sought an order for payment under Regulation 10.**
2. **By Notice of Acceptance dated 6 December 2018 a legal member of the First-tier Tribunal with delegated powers so to do, accepted the application for determination by the First-tier Tribunal.**

3. A Case Management Discussion (CMD) took place at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT on 22 January 2019. Ms Lindsey Abercrombie attended the CMD on behalf of the respondent, along with Mr David Syme, the applicant's father who was present as a supporter and took no part in the proceedings. By email dated 22 January 2019 the applicant advised that she had intended to be present but due to childminding difficulties which had arisen at a late stage, she would not be able to attend but she confirmed that she was happy that the CMD should proceed in her absence.
4. The respondent submitted written representations by email dated 17 and 18 January 2018. These submissions largely related to matters out with the scope of the present application. The respondent raised issues in relation to payment of rent during the tenancy period and to the condition of the property when it was vacated.
5. In her email of 22 January 2018 the applicant responded to the points raised by the respondent.

Findings in Fact:

6. The parties entered into a Short Assured Tenancy by Lease dated 3 July 2015. The lease was terminated by the Applicant who vacated the property on 31 August 2018. The tenancy therefore subsisted for a period of 3 years and 1 month.

Representations:

7. In her email of 18 January Ms Abercrombie acknowledged that the respondent had not paid the deposit into an approved Tenancy Deposit Scheme in terms of the Regulations. She explained that she and her partner, the applicant, had purchased a new property and had decided to rent out the subject property rather than wait on a sale. She said that neither of them had previous experience as landlords but that they had investigated the position and had registered the applicant as a landlord with the local authority and had registered with Safe Deposits Scotland.
8. The property was successfully rented shortly after going on to the market at a time when their new house was undergoing extensive renovation. Ms Abercrombie was also 5 months pregnant at the time and had a 9 month old child.
9. Ms Abercrombie frankly acknowledged that with all of the upheaval they did not place the deposit which had been paid to them with Safe Deposits Scotland, which she described as being a complete oversight. They only realised their error when they received notification that an application was being made to the tribunal.

10. The representations went on to make points about the condition of the property when it was vacated and regretted that the application had been made. Ms Abercrombie said that they would have welcomed the opportunity to discuss the situation with the applicant since she had felt entitled to make a deduction from the deposit towards the work which had been required after it had been vacated.
11. The respondent also pointed out that the tenants had been allowed to end the lease early at their request by one month's notice instead of two as provided in the lease.
12. The applicant denied that there had been significant damage and pointed out that they had come to the tribunal on advice from CAB and Shelter. She pointed out that the respondent had been in breach of his responsibilities and obligations as a landlord under the Tenancy Deposit Regulations and that they had been denied the opportunity to recover their deposit from an approved scheme.

Reasons for Decision:

13. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision. The tribunal decided, on the basis of the information presented to it, to determine the application at the CMD.
14. Regulation 10 of the Regulations provides that if the tribunal is satisfied that the landlord did not comply with the duty in Regulation 3 to place the deposit in a scheme within the time limits specified, which was admitted, the tribunal must order the landlord to pay to the tenant an amount not exceeding 3 times the amount of the deposit. Accordingly, the only question for the tribunal is to determine the amount of the sanction.
15. In assessing the level of sanction, the tribunal considered the representations by the parties and the decision of Sheriff Welsh in the case of *Jenson v Fappianno* 2015 GWD 4-89 at paragraphs [11], [12] and [18].
16. In the present case the tenancy started on 3 July 2015 and was terminated by the tenant on 31 August 2018, a period of just over 3 years. The deposit was not paid into an approved scheme at any point during the tenancy and was therefore unprotected throughout the tenancy.
17. There was nothing to suggest that there had been a wilful default or that he had systematically been in default in respect of a number of tenancies.
18. In this case, the Respondent had become involved in private letting unintentionally and the tribunal accepts that while he did familiarise himself with the obligations of a landlord, he failed to lodge the deposit with the scheme with

which he had gone to the effort of registering. He did frankly accept his failure and accepted that the tribunal is required by the Regulations to impose a sanction. The tribunal accepted that the respondent and Ms Abercrombie were undoubtedly undergoing a difficult and stressful time but neither this nor the Respondent's inexperience as a landlord can fully mitigate his responsibility to fulfil his obligations and commitments.

19. The deposit was not paid to a scheme at any time and the tenant was therefore unable to invoke to the dispute resolution services under such a scheme to assess the repayment due to her. If the deposit had been paid into a scheme, albeit late, the Applicant would have been able to recover the deposit or a proportion of it and to receive the sanction resulting from the Respondent's failure.
20. The range of sanction open to the tribunal is up to a maximum of three times the amount of the deposit of £575 being a total of £1725. The tribunal considers that in the light of the representations made, the level should be at the lower end of the scale, but also take account of the fact that the tenant has been unable to obtain repayment of any part or all of the deposit. Accordingly the tribunal considers that it would be fair, proportionate and just to sanction the Respondent for noncompliance by awarding the Applicant a sum equivalent to one and a half times the deposit (£862.50).

Decision:

21. The Respondent will pay to the Applicant the sum of £862.50 by way of sanction under Regulation 10(a).

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.

David Preston

Legal Member/Chair

Date

22 January 2019