

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/21/1952

Re: Property at 54 David Street, Kirkcaldy, Fife, KY1 1XB (“the Property”)

Parties:

Miss Nicola Jones, Mr Dean Whitton, 10 Barley Close, Whalley, Lancashire, BB7 9XY; 6 Raith Crescent, Kirkcaldy, Fife, KY2 5NN (“the Applicant”)

Mrs Emma Edington, 21/2 Parkgrove Loan, Edinburgh, EH4 7QX (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £825 should be made in favour of the Applicant.

Background

1. By application received on 12 August 2021, the Applicants seek an order in terms of Regulation 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). A tenancy agreement and emails from Safe Deposits Scotland, Letting Protection Service and My Deposit Scotland were lodged in support of the application. In response to a direction issued by the Tribunal, the Applicants lodged evidence of payment of the deposit and stated that the tenancy had ended on 18 June 2021. They also provided copy text messages which stated that they had given notice on 21 May 2021 and had moved out of the property on 13 June 2021.
2. The Tribunal served a copy of the application of the Respondent. The application called for a CMD at 2pm on 5 October 2021 by telephone conference call. The Applicants participated. The Respondent also participated and was supported by her partner, Mr McFarlane.

The CMD

3. From the application form, the documents lodged in support of the application, and the information provided by the parties at the CMD the Tribunal noted the following: -
 - (i) The tenancy started on 1 February 2021 and ended on 18 June 2021.
 - (ii) The Applicants paid a deposit of £550 on 22 January 2021, with the first month's rent.
 - (iii) The deposit of £550 was not lodged in an approved tenancy deposit scheme.
 - (iv) The deposit has not been returned to the Applicants.
4. Ms Edington advised the Legal Member that she does not dispute that she failed to lodge the deposit in an approved scheme. She assumed that the letting agent would deal with any such issues although they had only been contracted to find tenants, carry out viewings, check references and get the lease signed. They did not manage the property after this point and the rent and deposit were paid to her. She stated that this is the only property she lets out, that she has been a landlord for about 2 and a half years and has only had one previous tenant. She advised that repayment of the deposit is in dispute as she had to spend money on cleaning and dealing with damage after the tenancy ended. However, after being served with a copy of the application, she offered to repay the whole deposit with a view to resolving matters. She has not received a response.
5. Ms Jones advised the Legal Member that when they moved into the property, they contacted the letting agent about a couple of problems. The agent said that they were no longer dealing with the property but offered to contact the Landlord on their behalf. After they moved out, they contacted the Respondent about repayment of the deposit. They were told that they had caused damage, which they denied. The property had been left by them in pristine condition. When they had moved in it was evident that it had not been cleaned and there were items of furniture which the letting agent had assured them at the viewing would be removed. This is why they had to contact the Respondent. When the Respondent stated that she would not return the full deposit at the end of the tenancy, they asked her where the deposit had been lodged. Although they sent several emails, no response was received. They did not hear from her until the application was served on her. Ms Jones also advised the Tribunal that the Respondent's failure to lodge the deposit has caused stress and financial problems as they had to borrow money for a deposit for another property. Several months have passed and the deposit has still not been returned. They were also annoyed by the claim that they had not cleaned the property and had

caused damage, as the property was in much better condition than at the start of the tenancy.

6. Although she recalls receiving emails from the Respondents after the tenancy ended, Ms Edington was unable to say whether the Applicants had asked about the lodging of the deposit in a tenancy deposit scheme. She also advised the Tribunal that she does not live near the property and did not see it before the Applicants moved in. However, once contacted about the condition she attended to the issues which had been reported to her. She had assumed that they letting agents would deal with such matters.

Findings in Fact

7. The Applicants are the former tenants of the property.
8. The tenancy started on 1 February 2021.
9. The Respondent is the owner and landlord of the property.
10. The Applicants paid a deposit of £550 on 22 January 2021.
11. The deposit paid by the Applicants was not lodged in an approved tenancy deposit scheme.
12. The tenancy deposit has not been repaid to the Applicants.

Reasons for Decision

13. Regulation 3 of the 2011 Regulations states –
 - (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.
 - (1A) Paragraph (1) does not apply –
 - (a) Where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and
 - (b) The full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord,
Within 30 working days of the beginning of the tenancy.

14. The Tribunal is satisfied that the Applicant's tenancy is a relevant tenancy in terms of the 2011 Regulations and that a deposit of £550 was paid and not lodged in an approved deposit scheme within 30 days of the start of the tenancy. The application was received by the Tribunal on 12 August 2021. The Applicants have therefore complied with Regulation (9)(2) of the 2011 Regulations, which requires an application to be submitted no later than 3 months after the tenancy had ended.
15. Regulation 10 of the 2011 Regulations stipulates that if the Tribunal is satisfied that the landlord did not comply with a duty in terms of regulation 3, it **"(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit."** The Tribunal therefore determines that an order must be made in favour of the Applicant.
16. The Tribunal noted that the parties are in dispute regarding repayment of the deposit as the Respondent claims that the property required to be cleaned and that the Applicants caused damage. This is denied by the Applicants. The deposit is still in the possession of the Respondent. The Applicants' entitlement to the return of the deposit, or otherwise, is not relevant to the present application. However, the Legal Member notes that the Applicants have been deprived of the opportunity to have this issue determined by an independent third party, namely the tenancy deposit scheme. Had the deposit been lodged, the parties could have used the scheme's adjudication process. Failure to lodge the deposit has also led to a delay in this matter being resolved. The Legal Member was not persuaded by the Respondent's recent offer to repay the whole deposit. It was conceded that this was motivated by the hope that the present application would be withdrawn.
17. The Applicant seeks an award of three times the deposit, the maximum which can be awarded. The Legal Member notes that the deposit was not secured throughout the tenancy, although this only lasted four and a half months. The Legal Member is also satisfied that the failure to lodge the deposit caused stress, inconvenience, and financial difficulty for the Applicants. However, the Legal Member also notes that Respondent is an inexperienced landlord with only one property. This does not excuse the failure, but the Legal Member is satisfied from the information provided, that the Respondent did not deliberately flout the regulations. She appears to have been unaware of the requirements regarding tenancy deposits and also failed to clearly establish with the letting agent where their management of the property ceased and hers began. In the absence of any evidence that the failure was deliberate, the Legal Member is not persuaded that the award should be at the top end of the scale.
18. The Legal Member is satisfied that an award of one and a half times the deposit should be made in favour of the Applicants, the sum of £825.

Decision

19. The Tribunal determines that an order for payment of the sum of £825 should be made in favour of the Applicants.

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.

Josephine Bonnar, Legal Member

5 October 2021