



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

Chamber Ref: FTS/HPC/PR/23/2552

Re: Property at 3/2 91 Parklands Oval, Glasgow, G53 7UD (“the Property”)

Parties:

Mr Kieran Herbert, Miss Danielle Corson, 003 Longfield House, Victoria Road, Leeds, LS6 1FJ (“the Applicant”)

Miss Jessica Williams, 82 Crosshill Terrace, Wormit, Newport-on-Tay, Fife, DD6 8PZ (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) determined to make an order for payment in the sum of One hundred and fifty pounds (£150) Sterling

Background

- 1 By application dated 28 July 2023 the Applicants applied to the Tribunal seeking an order for payment as a result of the Respondent’s failure to lodge their deposit in an approved tenancy deposit scheme.
- 2 By Notice of Acceptance of Application dated 11 August 2023 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned.
- 3 The Tribunal subsequently received written representations from the Respondent, as well as from the Respondent’s letting agent. Said representations were intimated upon the Applicants.

The Case Management Discussion

- 4 The Applicants were represented by Mr Herbert. The Respondent was represented by Natalie Deacon from LettingaProperty, who was present with her colleagues Helen Davis and Jonathan Danes.
- 5 The Legal Member explained the purpose of the Case Management Discussion and the legal test to be applied. She asked the parties to address her on their respective positions. Their submissions are summarised below. For the avoidance of the doubt, this is not a verbatim account of what was discussed at the Case Management Discussion but a summary of those matters relevant to the Tribunal's determination of the matter.
- 6 Mr Herbert advised that the Applicants' experience with letting the property had been poor. The Respondent's letting agent had asked for a holding deposit at the start of the tenancy, which was not permitted in Scotland, and it had to be refunded. It had taken a while to sort it out. Following the termination of the tenancy the Applicants had received an email from the Respondent's agent asking for rent payments after they had moved out. The Applicants had then asked for an update on the deposit being returned. They didn't get any response from the Respondent's agent. The Applicants had then emailed the three deposit schemes in Scotland who confirmed that no deposit was held. The Applicants had then contacted the Respondent's agent who confirmed that the deposit had been sent to the Letting Protection Service Scotland but had not be registered against their tenancy agreement. Mr Herbert pointed out that although the money had been sent over, there would have been no protection for the Applicants in the event of a dispute. The Respondent's agent had then received the deposit back from the Letting Protection Service Scotland. It was refunded to the Applicants in full. In response to questions from the Tribunal Mr Herbert confirmed that he had received no information regarding the deposit at the start of the tenancy, other than in the tenancy agreement. The deposit had been paid on 5th September 2022. The tenancy ended on 30th June 2023 and the deposit was repaid on 21st July 2023.
- 7 Ms Deacon made reference to the written representations submitted by her agency on the Respondent's behalf. She confirmed that the deposit had been paid on 5th September 2022, five days before the commencement of the tenancy. The funds were sent to the Letting Protection Service Scotland on 12th September 2022 and received by them on 14th September 2022. Due to an error the funds were not assigned to the tenancy. The Letting Protection Service Scotland had confirmed that the funds had been held in the Respondent's agent's account for the duration of the tenancy. Ms Deacon confirmed that the property was on their Letting Protection Service Scotland dashboard but the tenancy details had not been entered. In terms of the procedures for registering deposits the funds would be transferred and then the Respondent's agent would create the tenancy on the system to enable

funds to be allocated to a particular tenancy. As a result the deposit certificate had not been created, nor issued. The Respondent's agent would normally receive email confirmation from the Letting Protection Service Scotland which would prompt the issuing of a deposit certificate however in this case that had not happened and it wasn't picked up.

- 8 Ms Deacon confirmed that at that time the deposit was paid in September 2022 the Respondent's agent had been in the process of building a new online platform and were in the process of migrating their tenancies to a new deposit scheme. The Applicants' deposit had been missed. This had never happened before. The new system was now in place and would ensure going forward that the correct communications were sent out to tenants. Ms Deacon confirmed that her agency had been operating for around 15 years and managed between 15 and 20 properties in Scotland, as well as properties in England and Wales. In response to questions from the Tribunal Ms Deacon confirmed that there was no risk to the deposit during the tenancy. Each payment had a corresponding reference therefore they knew that the funds were linked to the Applicant's tenancy in the event of any dispute arising. She confirmed that her agency had protected over £2 million of tenancy deposits and had always acted in good faith. The error with the Applicant's deposit had been unfortunate.
- 9 The Case Management Discussion concluded and the Tribunal determined to issue its decision in writing.

Relevant Law

- 10 The relevant law is contained with the Housing (Scotland) Act 2006 and the Tenancy Deposit Scheme (Scotland) Regulations 2011. Section 120 of the 2006 Act provides as follows:-
- “120 Tenancy deposits: preliminary*
- (1) A tenancy deposit is a sum of money held as security for—*
- (a) the performance of any of the occupant's obligations arising under or in connection with a tenancy or an occupancy arrangement, or*
- (b) the discharge of any of the occupant's liabilities which so arise.*
- (2) A tenancy deposit scheme is a scheme for safeguarding tenancy deposits paid in connection with the occupation of any living accommodation.*
- 11 The 2011 Regulations provide as follows:-
- “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.”

“9.—(1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal 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 Tribunal—

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

(b) may, as the Tribunal 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.”

Findings in Fact

- 12 The Applicants and the Respondent entered into a private residential tenancy agreement which commenced on 10th September 2022.
- 13 The Respondent engaged a letting agent, LettingAProperty, to manage the tenancy on her behalf.
- 14 In terms of Clause 11 of the said tenancy agreement the Applicants agreed to make payment of a tenancy deposit in the sum of £1000.
- 15 The Applicants paid the tenancy deposit of £1000 to LettingAProperty on 5th September 2022.

- 16 LettingAProperty paid the deposit to the Letting Protection Service Scotland, an approved tenancy deposit scheme, on 12th September 2022. The tenancy deposit was not identified as being linked to the Applicants' tenancy.
- 17 Neither LettingAProperty, nor the Respondent, provided the Applicants with the prescribed information regarding the tenancy deposit as required by regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 within thirty days of the commencement of the tenancy.
- 18 LettingAProperty is a national letting agency with properties in both England and Scotland.
- 19 LettingAProperty repaid the tenancy deposit to the Applicants on 21st July 2023.
- 20 The deposit was held within an account with the Letting Protection Service Scotland for the duration of the tenancy.

Reasons for Decision

- 21 The Tribunal determined the application having regard to the application paperwork, the written representations from the parties and the verbal submissions at the Case Management Discussion. The Tribunal was satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. It was noted that the substantive facts of the matter were agreed.
- 22 The 2011 Regulations specify clear duties which are incumbent on landlords of relevant tenancies in relation to tenancy deposits. The tenancy in this case was a relevant tenancy for the purpose of the Regulations.
- 23 Regulation 3(a) requires a landlord to pay any deposit received in relation to a relevant tenancy to an approved tenancy deposit scheme within thirty working days of the beginning of the tenancy. The deposit must then be held by the scheme until it can be repaid in accordance with the requirements of the Regulations following the end of the tenancy. The Tribunal was satisfied based on the information before it that the Respondent's letting agent had paid the deposit to the Letting Protection Service Scotland within thirty working days of the beginning of the tenancy. This was supported by an excerpt from the Respondent's agent's account. The Applicants had not provided any evidence to suggest that the deposit had been held elsewhere

and the Tribunal found the Respondent's account of events to be credible in respect of this matter. Whilst it had been unfortunate that the deposit had not been registered against the tenancy, nevertheless the Tribunal found the Respondent to have complied with Regulation 3(a).

- 24 However, as had been conceded by Ms Deacon at the Case Management Discussion, the Tribunal did find the Respondent to be in breach of Regulation 3(b), in that she had failed to provide the relevant information required by Regulation 42 to the Applicants within thirty working days of the commencement of the tenancy. It was accepted that the deposit certificate that would normally meet this statutory duty had not been provided to the Applicants due to the error with the lodging of the deposit in the deposit scheme.
- 25 Regulation 9 provides that any tenant may apply to the Tribunal for an order where the landlord has not complied with either duty under regulation 3. Further, under Regulation 10 in the event of a failure to comply, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. Accordingly having been satisfied that the Respondent had failed to comply with regulation 3(b), the Tribunal then had to consider what sanction to impose having regard to the particular facts and circumstances of the case. The 2011 Regulations do not set out what sum should be paid, other than setting a maximum of three times the deposit. It is therefore a matter of judicial discretion.
- 26 The Tribunal considered the requirement to proceed in a manner which is fair, proportionate and just, having regard to the relevant factors before it. The Tribunal took into account the fact that the deposit had been held in an approved deposit scheme for the duration of the lease. The Applicants had not raised any issue until after the tenancy had ended when it was time for the deposit to be repaid. The deposit had then been repaid to the Applicants in full. The Tribunal concluded that there had therefore been a level of protection afforded to the Applicants throughout the duration of the tenancy, and that in the event of a dispute it could reasonably be assumed that the error would have come to light and the appropriate procedures followed through the scheme's deposit resolution mechanism.
- 27 The Tribunal did note the purpose of the 2011 Regulations, namely to ensure that landlords are compliant with each of the duties under Regulation 3, not just to lodge the deposit but also ensure that tenants are provided with the relevant information to give them the assurance of knowing where their deposit is being held. The Tribunal also placed weight on the fact that the Respondent was represented by a professional letting agent who should have sought to ensure clients were compliant with their statutory duties. However the Tribunal did not consider there to be any malice in the Respondents' error, she and her agents had both conceded the breach and had apologised for it.

The Tribunal did therefore consider there to be mitigating factors in this particular case, which would justify an award at the lower end of the scale. The Tribunal therefore considered that the sum of £150 would represent a fair and proportionate sanction, having balanced the relevant factors in this case.

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.

R O'Hare

26 October 2023

Legal Member/Chair

Date