



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 on an application made under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/23/3023

Re: Property at 240 Wallace Street, Flat 2/5, Glasgow, G5 8AS (“the Property”)

Parties:

Miss Anne-Caroline Le Bescond, 13 Govanhill Street Flat 0/2, Glasgow, G42 7PU (“the Applicant”)

Mr Marcin J Kasiarz, whose present whereabouts are unknown (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted without a Hearing and made an Order for Payment by the Respondent to the Applicants of the sum of One Thousand One Hundred and Fifty Pounds Pounds (£1,150).

Background

1. By application, received by the Tribunal on 30 August 2023, the Applicant sought an Order for Payment in respect of the failure of the Respondent to comply with Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicant’s complaint was that, although the tenancy had commenced on 20 August 2021, the Respondent had failed to lodge the deposit of £375 in an approved tenancy deposit scheme until 11 August 2022. The Respondent had not registered as a landlord on the Landlord Register. Applicant was seeking an Order for Payment of three times the amount of the deposit.
2. The application was accompanied by a copy of a Tenancy Agreement between the Parties, commencing on 20 August 2021 at a rent of £345 per month, with

a deposit of £375. The Tenancy Agreement purported to be for a fixed term, but such a tenancy can no longer be created in Scotland and the tenancy is, therefore, a Private Residential Tenancy in terms of the Private Housing (Tenancies) (Scotland) 2016. The heading was mis-spelt “Tennancy Agreement” and the legislation referred to within it applied to England and not to Scotland, as it purported to create an assured shorthold tenancy. The agreement contained a clause confirming that the deposit of £375 had been paid on 19 August 2021.

3. The Applicant also provided, with the application, confirmation emails from SafeDeposits Scotland (15 June 2023), and Letting Protection Scotland (16 June 2023), two of the three approved tenancy deposit schemes, that the deposit had not at any time been lodged with them. MyDeposits Scotland, the third approved scheme, stated in an email of 16 June 2023 that the deposit had been secured with them on 11 August 2022.
4. On 24 October 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 14 November 2023. An attempt to serve the papers on the Respondent at the address provided in the application was unsuccessful and, as this whereabouts were otherwise unknown, service on him was effected by advertisement on the Tribunal’s website from 21 December 2023 until 8 February 2024.

Case Management Discussion

5. A Case Management Discussion was held by means of a telephone conference call on the morning of 8 February 2024. The Applicant was present. The Respondent was not present or represented.
6. The Applicant advised the Tribunal that the Respondent was not registered as a landlord, but that neighbours had told her that he had rented out the Property for a number of years before she moved in. There was a second tenant with whom the Applicant shared the flat. In July 2022, when the other tenant moved out and someone else moved in, the Respondent tried to increase the rent. The Applicant then emailed the Respondent to ask about the deposit and he sent her the evidence of the deposit being lodged with MyDeposits Scotland, but it was clear to the Applicant that he had provided them with an incorrect date for the commencement of the tenancy, namely August 2022, and had only lodged the deposit as a result of her enquiry, on 11 August 2022.
7. The Applicant vacated the Property on 31 May 2023. On 20 May, the Respondent had gone round the Property with her and had raised no issues. He told her he was selling and that she did not need to undertake a deep clean, but he had then claimed £298.26 of the deposit in respect of cleaning, damage and unpaid bills. The decision of MyScotland was that the entire deposit should be repaid to the Applicant, under an agreed deduction for a final utilities bill.

Findings in Fact

- The Parties entered into a lease of the Property, commencing on 20 August 2021.
- The rent was £345 per month, with a deposit of £375.
- The Respondent lodged the deposit with MyDeposits Scotland on 11 August 2022.
- The Respondent did not provide the Applicant with information confirming the name and contact details of the scheme administrator of the tenancy deposit scheme to which the deposit had been paid.
- The tenancy ended on 31 May 2023.
- The deposit, under an agreed deduction in respect of a final utilities bill, was repaid to the Applicant.

Reasons for Decision

8. 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 was satisfied that it had before it sufficient information and documentation to enable it to determine the application without a Hearing.
9. Under Regulation 3(1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“The 2011 Regulations”), a landlord must, within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme. Under Regulation 10, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal **must** order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit. Regulation 42 of the 2011 Regulations requires a landlord to provide certain information to tenants, including the name and contact details of the scheme administrator of the tenancy deposit scheme to which the deposit has been paid.
10. The Tribunal noted that the Respondent had used a style of tenancy agreement suitable only for properties in England and that he had not registered as a landlord in the Scottish Landlord Register, but it appeared that he had let out the Property to a number of different tenants over a period of years. There was no excuse for his failure to comply with the requirements of landlord and tenant law in Scotland and, in particular in this case, the requirement to lodge deposits in an approved tenancy deposit scheme. It appeared that he had only decided to lodge the deposit when he was asked about it by the Applicant in July 2022. The Tribunal could not speculate as to whether, in the absence of his prompting by the Applicant, he would ever have lodged the deposit, but the fact was that it remained unprotected from, at best, 30 working days from 19 August 2021 until 11 August 2022.
11. The Tribunal also could not speculate as to whether, had the Respondent failed to lodge the deposit at all, he would have sought to retain it when the tenancy came to an end, but the fact that he initially tried to claim £298.26 in his correspondence with MyDeposits Scotland indicates that a dispute might well have followed in a situation where the Applicant would have been completely

unprotected. The Tribunal also noted the statement of the Applicant that the Respondent had indicated to MyDeposits Scotland that the tenancy began in August 2022 when he was fully aware that it had commenced almost a year earlier.

12. The view of the Tribunal was that this was a particularly serious failing on the part of the Respondent. He knew or ought to have known that he was required to lodge the deposit and he chose not to do so until, apparently, the Applicant raised the matter with him when another tenant was being replaced. The Applicant's funds were at risk for almost a year and there appeared to be no mitigating circumstances.

13. Having considered all the facts and circumstances of the case, the Tribunal decided to order the Respondent to pay to the Applicants the sum of £1,150. This was a figure that the Tribunal regarded as fair, proportionate and just, taking into account the stress and inconvenience and potential loss of opportunity caused to the Applicants by the Respondent's failure to lodge the deposit as required by law and the fact that this was a particularly serious failure.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.



Legal Member/Chair

7 February 2024
Date

