

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/CV/23/2157

Re: Property at 2/1 656 Eglinton Street, Glasgow, G5 9RP (“the Property”)

Parties:

**Mr Aitor Azemar Carnicero, Ms Judith Montesinos Bolaños, 2/2 4 Tower Terrace,
Paisley, PA12JT; 2/2 4 Tower Terrace, Paisley, PA12 2JT (“the Applicant”)**

Ms Naseem Akhtar, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member)

Decision (in absence of the Respondent)

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

BACKGROUND

1. By lease dated 10th August 2020 the Applicant rented the property from the Respondent.
2. The lease detailed the landlord as being the Respondent. She was designed by her name only. No address was contained within the lease in relation to the landlord.
3. The tenancy ended on 9 June 2023.
4. A tenancy deposit of £500 was paid by the Applicants. This deposit was not lodged with an approved tenancy deposit scheme as required in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the TDS Regs”).

5. Following the termination of the tenancy the Applicants requested details of the tenancy deposit scheme in which the deposit was held or, alternatively, the return of the deposit directly to them. The Respondent replied advising that, as the last month's rent had not been paid the Parties were equal, indicating that the deposit would not be returned and would be used as payment of the last monthly rental payment. The Applicants, however, had made payment of the last monthly rental payment. Even after that was pointed out to the Respondent the tenancy deposit was not returned.
6. Following the raising of proceedings before the Tribunal, the Respondent lodged Submissions with the Tribunal. The Submissions were brief, stating that she was not the landlord of the Property. She was simply assisting the landlord in the letting process.
7. The title sheet for the property in the land register details the owner of the property as being Mohammed Mahmood.

THE CASE MANAGEMENT DISCUSSION

8. The Applicants participated in the Case Management Discussion. The Respondent did not. The Tribunal, however, had received Submissions from the Respondent in relation to the application confirming the Respondent was aware of the proceedings. In the circumstances, the Tribunal proceeded in the absence of the Respondent.
9. The Applicants moved the Tribunal to grant both orders sought by them – an order for repayment of the deposit funds and, separately, a penalty to be imposed upon the Respondent for failure to comply with the tenancy deposit regulations. In the absence of any appearance or representation at the Case Management Discussion the Tribunal granted the orders sought.

REASONS FOR DECISION

10. While the Respondent forwarded correspondence to the Tribunal stating that she was not the landlord, she is detailed as being the landlord within the lease. The lease does not detail nor indicate in any way whatsoever that the Respondent was acting as an agent for the true owner of the Property. If the true landlord is another person, having regard to the terms of the lease the Respondent was acting as an agent for an undisclosed principal. In those circumstances, the Respondent is legally liable and responsible for orders which may be granted against the undisclosed principal.
11. The position is fortified by the fact that, in the course of the tenancy, and following termination of the tenancy, the exchange of messages between the Parties was between the Applicants and the Respondent rather than any other person who was, apparently, the true landlord.
12. In relation to the tenancy deposit itself, there appears to be no reason whatsoever for this to have been retained by the Respondent (or the undisclosed principal) and, apart from the incorrect suggestion that the final

month's rent had not been paid, no information was placed before the Tribunal to justify retention of the deposit.

13. In relation to the breach of the TDS Regs, this case is a blatant breach of the regulations and highlights everything the regulations are designed to protect against:-

- A deposit was paid by the Applicant.
- It was received by the Respondent (or the undisclosed principal).
- It was never lodged with an approved scheme.
- It was never protected at any stage throughout the tenancy.
- At the conclusion of the tenancy the deposit was retained in full and, as at the date of the Case Management Discussion, had still not been returned to the Applicant.
- The Applicant was deprived of the ability to seek return of the deposit funds from a TDS scheme.
- The Applicant was deprived of the right to use the TDS scheme's free dispute resolution process.

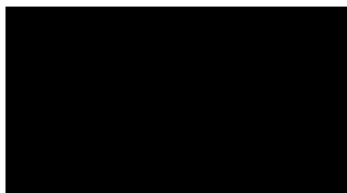
That being so, and there being no information presented to the Tribunal whatsoever to explain why the tenancy deposit had not been lodged with an approved scheme, the Tribunal considered that such a blatant and continuing breach of the Regulations merited a penalty at the highest level available to the Tribunal.

DECISION

The Tribunal granted an order against the Respondent for payment of the sum of ONE THOUSAND FIVE HUNDRED POUNDS (£1,500.00) STERLING to 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.



Legal Member/Chair

8th January 2024

Date

