



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

Chamber Ref: FTS/HPC/PR/24/0088

Re: 54 Windsor Gardens, Hamilton ML3 OND (“the Property”)

Parties:

Thomas Carroll and Julie Carroll, 28 Arran Gardens, Hamilton ML3 7NZ (“Applicant”)

Hamilton CAB, Almada Tower, 67 Almada Street, Hamilton ML3 OHQ (“Applicant’s Representative”)

John Campbell and Mabel Campbell, 58 Glenelly Road, Plumbridge, Omagh, County Tyrone BT79 8BN (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Decision :

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay to the Applicant the sum of £1200 plus interest thereon at the rate of 5% per annum from 16 April 2024 until payment.

Background

1. The Applicant made an application in Form G (“Application”) lodged on 9 January 2024 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“Rules”) stating that the Respondent had failed to timeously lodge a tenancy deposit in an appropriate scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“2011 Regulations”). The documents produced to the Tribunal by the Applicant were an email from Mydeposits Scotland dated 8 January 2024 noting that they did not hold the deposit; an email from SafeDeposits Scotland dated 5 January 2024 noting that they did not hold the deposit; an email from Letting Protection Scotland dated 8 January 2024 noting that they did not hold the deposit; a copy section 33 notice and notice to quit seeking to bring the tenancy

to an end on 1 August 2023; copy messages between the Parties and a final energy bill which indicated the tenancy ended on 30 November 2023.

2. A copy of the Application and notification of a Case Management Discussion ("CMD") fixed for 16 April 2024 was given to the Respondent by Sheriff Officer on 8 March 2024.

Case Management Discussion ("CMD")

3. A CMD took place on 16 April 2024 by conference call. The Applicant was represented by Jordan Bird of the Applicant's Representative. He told the Tribunal that the First Applicant had intended to attend but had suffered an injury that day and was unable to attend. There was no appearance by or on behalf of the Respondent.
4. The Tribunal noted that no tenancy agreement had been lodged and no evidence of a deposit having been paid although the Applicant had lodged a signed submission in which they stated that they had made inquiries with Clydesdale Bank and the Royal Bank from which they had paid rent but, due to the passage of time, neither bank was able to provide a record of the deposit having been paid.
5. Mr Bird told the Tribunal that both Applicants had been the tenant of the Property. He said they took entry on 1 April 2008 and paid a deposit of £500. He said that the deposit had been paid by bank transfer from their account with Clydesdale Bank. He noted that Clydesdale Bank is now part of Virgin Money. He said that the rent was in the region of £400 per month. Mr Bird said that the Applicants had made every effort to locate a copy of the tenancy agreement but without success. He said they did recall signing a short assured tenancy agreement. The Tribunal noted that a section 33 notice and notice to quit had been served. The section 33 notice referred to the tenancy commencing on 1 April 2008 which accorded with the Applicant's recollection.
6. Mr Bird told the Tribunal that the deposit of £500 was not returned to the Applicants. The Tribunal noted from the copy text messages lodged that the Respondent suggested that the deposit may have been held by a previous letting agent who had gone into liquidation. Mr Bird said that he had been unable to locate a registered landlord for the Property. He said that the Applicants understood that the Respondent owned and rented out a number of properties in Scotland. He noted that they traded as J&M Properties.
7. Mr Bird invited the Tribunal to make an award of compensation equivalent to 3 times the deposit. He referred to paragraph 33 of the Upper Tribunal decision in *Ahmed v Russell* and submitted that the landlord here was a professional

landlord with knowledge of the system and therefore the level of culpability was high. He also referred to the Tribunal decision FTS/HPC/PR/22/2399 where the sanction was 3 times the deposit. Mr Bird also sought interest at 8% on any award made.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement which commenced on or about 1 April 2008.
2. The Applicant paid to the Respondent a deposit of £500 on or about 1 April 2008.
3. The deposit was not paid to the administrator of an approved scheme in compliance with the 2011 Regulations.
4. The tenancy terminated on 30 November 2023.
5. The deposit has not been repaid to the Applicants.

Relevant Legislation

8. Regulation 3 of the 2011 Regulations provides *inter alia* :

"(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...

9. Regulation 9 of the 2011 Regulations provides:

"(i) 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.

(ii) An Application under paragraph 1 must be made no later than three months after the tenancy has ended."

10. Regulation 10 of the 2011 Regulations provides *inter alia* :

"If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal –

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

11. Regulation 47 of the 2011 Regulations provides :

Where the tenancy deposit was paid to the landlord before the day on which these Regulations come into force, regulation 3 applies with the modification that the tenancy deposit must be paid, and the information provided, within 30 working days of the date determined under paragraph (a) or (b).

Reasons for the Decision

12. Although the tenancy in this case was entered into before the 2011 Regulations came into force, the transitional provisions in Regulation 47 mean that the deposit required to be placed in an approved scheme within 9 months of an approved scheme becoming operational.

13. Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme administrator of an approved scheme within the required timescales, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. The Tribunal was satisfied that the Respondent did not lodge the deposit with an approved scheme.

14. The amount to be awarded is a matter for the discretion of the Tribunal having regard the factual matrix of the case before it. The Tribunal considered the comments of Sheriff Ross in *Rollett v Mackie* UTS/AP/19/0020. At para 13 and 14 he considered the assessment of the level of penalty and said:

"[13] In assessing the level of a penalty charge, the question is one of culpability, and the level of penalty requires to reflect the level of culpability. Examining the FtT's discussion of the facts, the first two features (purpose of Regulations; deprivation of protection) are present in every such case. The question is one of degree, and these two points cannot help on that question. The admission of failure tends to lessen fault: a denial would increase culpability. The diagnosis of cancer also tends to lessen culpability, as it affects intention. The finding that the breach was not intentional is therefore rational on the facts, and tends to lessen culpability.

[14] Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or

reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals. None of these aggravating factors is present."

15. The Respondent did not attend the CMD to explain to the Tribunal any mitigating factors. The only possible mitigating factor that emerged from the papers lodged was a suggestion that the deposit may have been held by a letting agent who had gone into liquidation. That does not excuse the Respondent's failure to comply with the 2011 Regulations.
16. The Tribunal considered that there were aggravating factors in the case. Firstly the lack of admission of fault. Secondly the length of time during which the deposit was unprotected which was over 15 years. Finally, as the deposit was not lodged in an approved scheme the Applicants were deprived of the opportunity to approach the scheme administrator regarding return of the deposit. In these circumstances the purpose of the 2011 Regulations was defeated. This was the aggravating factor to which the Tribunal attached the most weight. The Tribunal considered that it would be appropriate to make an award of compensation at the higher end of the scale.
17. The Tribunal determined that the sanction should be £1200 in the particular facts and circumstances of this case plus interest thereon at the rate of 5% per annum.

Decision

The Tribunal granted an Order for payment of £1200 in terms of Regulation 10(a) of the 2011 Regulations. The Tribunal awarded interest thereon at the rate of 5% per annum in terms of rule 41A.

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.

**Joan Devine
Legal Member**

Date: 16 April 2024