



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

Chamber Ref: FTS/HPC/PR/23/3353

Re: Property at 133 Sinclair Street, Helensburgh, G84 9AT (“the Property”)

Parties:

Mrs Alice Deacon, 11a Moreton Road, South Croydon, LONDON, CR2 7DN (“the Applicant”)

Mr Stuart Clapham, 4280 Moncton St., Unit 113, Richmond, British Columbia, V7E 6T4, Canada (“the Respondent”)

Tribunal Member:

Alan Strain (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the sum of £4,000 to the Applicant.

Background

This is an application under Regulation 9 of the Regulations and Rule 103 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Rules)* in respect of an alleged failure to protect a tenancy deposit.

The Tribunal had regard to the following documents:

- 1. Application received 21 September 2023;**
- 2. Tenancy Agreement (TA) commencing 1 October 2022 and ending 31 October 2023;**
- 3. Deposit Protection Schemes correspondence confirming deposit not protected;**
- 4. Respondent’s Written Representations and documentation (including a receipt for landlord registration dues from Argyll and Bute Council dated 6 October 2022);**

5. Applicant's Written Representations and documentation (including a Whats App conversation between the Respondent and Paul Deacon (Applicant's husband) prior to commencement of the tenancy in September 2022).

Hearing

The Hearing proceeded by conference call.

The Applicant attended along with her solicitor. The Respondent participated and was represented by his solicitor.

Preliminary Matters

The Tribunal set out the procedure to be followed for the Hearing and identified the documents to be relied upon.

The Parties confirmed they had copies of the documents that had been lodged.

The Tribunal confirmed with the Applicant's Solicitor that the Applicant would not be giving evidence.

The Respondent's Solicitor confirmed that the Respondent would give evidence.

Evidence

The Tribunal heard from the Respondent who initially stated that this was the only Property he had let out and would never do so again. This was qualified under cross examination when he confirmed he actually let another Property in England through an agency and continued to do so.

The Respondent had relocated to Canada to look after his wife's father who had heart by-pass surgery and for whom they had to care on a daily basis. This placed considerable pressure on the Respondent and his family. This had distracted his attention from completing his landlord registration and protecting the deposit.

His evidence was that he did attempt to register as a landlord and paid the fee for so doing. He had attempted to do so online but had not completed the application. He did not have the EICR, gas safety checks or other necessary documentation to do so.

He did not read the emails he received from the local authority about his registration application.

He accepted that he was aware he needed to protect the deposit within one of the Schemes within 30 days of the tenancy commencing. He had attempted to do so online but had been unable to lodge the deposit as he had not completed his landlord registration.

He took no further steps to obtain his landlord registration until 7 September 2023 when the Applicant's Solicitor had raised the matter with him.

He then took steps to complete the registration process and obtain the relevant documentation. He stated that the Applicant had been obstructive in allowing access to the Property to facilitate safety checks.

The Applicant vacated the Property on 31 October 2023. The Respondent sold the Property shortly thereafter and has never completed his landlord registration.

He apologised for his oversight and naivety in failing to protect the deposit. It was not intentional and the deposit was repaid in full within a couple of days of the Applicant vacating.

The Respondent accepted that the Applicant's husband had given him detailed information in a WhatsApp exchange in September 2022 about the need to protect the deposit and various links to help him do so.

Submissions

Both Parties made submissions.

The Applicant's Solicitor submitted that a maximum award should be made as this was an instance of a "rogue" unregistered landlord who had let a Property that was not compliant with the repairing standard, had unlawfully received rent and a deposit when he had no right to do so and had been fully advised of his obligations in advance of the tenancy commencing.

The Respondent's Solicitor focused on the naivety and inadvertence of the Respondent. It was a difficult time for the Respondent moving to Canada and having to care for an infirm relative on a daily basis. He had repaid the deposit in full.

The Tribunal were referred to the cases of ***Jenson v Fappiano 2015 GWD 4-89*** and ***Rollett v Mackie UTS/AP/19/0020*** (paragraph 14). It was submitted that any sanction should be "fair, proportionate and reasonable". Relying on these authorities a maximum award was excessive.

Decision and Reasons

The Tribunal considered the evidence before it and made the following findings in fact:

1. The Respondent moved to Canada immediately prior to the commencement of the tenancy with his family to care for his wife's infirm father;
2. The Respondent let another Property in England through an agency from 2013 and which he continued to let;
3. Prior to the commencement of the tenancy the Respondent had been fully advised in a WhatsApp exchange in September 2022 by the Applicant's husband of the requirement to protect a deposit within 30 days and links were provided to assist with this;
4. The Applicant paid a deposit of £2000 on 12 September 2022 which was not protected for the duration of the tenancy;
5. The Parties entered into the TA commencing 1 October 2022 and ending 31 October 2023;

6. The Respondent attempted to register as a landlord on 6 October 2022. He paid a registration fee of £84 but did not complete the registration application;
7. The Respondent knew he had to protect the deposit within 30 days and had attempted to do so with one of the schemes. He was unable to do so as his landlord registration was incomplete;
8. He made no further attempts to protect the deposit or complete his landlord registration until the Applicant's Solicitor contacted him on 7 September 2023;
9. The deposit was unprotected for a period of nearly 14 months;
10. The deposit was repaid in full within a couple of days of the tenancy ending;
11. The Respondent is an experienced landlord who let 1 other Property in addition to this Property through an agency in England (since 2013);
12. The Respondent's personal circumstances (his relocation to Canada and his care for his wife's infirm father on a daily basis) did not prevent him from complying with his obligations as a landlord;
13. The Respondent has not completed landlord registration in Scotland as he has sold the Property.

It was clear that the tenancy deposit had not been protected in breach of the regulations. Having made those findings it then fell to the Tribunal to determine what sanction should be made in respect of the breaches. In so doing the Tribunal considered and referred to the authorities cited by the Respondent's Solicitor along with the case of ***Russell-Smith and others v Uchegbu [2016] SC EDIN 64***. The Tribunal considered what was a fair, proportionate and just sanction in the circumstances of the case always having regard to the purpose of the Regulations and the gravity of the breach. Each case will depend upon its own facts and in the end of the day the exercise by the Tribunal of its discretion is a balancing exercise.

The Tribunal weighed all the factors and found the following factors to be of significance:

- (a) The Respondent was an experienced landlord and let one other Property through agents in England since 2013;
- (b) The Respondent was fully advised in writing by the Applicant's husband in September 2022 of his obligation to protect the deposit and provided with links to facilitate this;
- (c) In this knowledge the Respondent attempted to comply with his obligations and tried to protect the deposit within 30 days. He failed to do so due to his incomplete landlord registration;
- (d) The Respondent took no further steps to protect the deposit until September 2023 when he was contacted by the Applicant's Solicitor;
- (e) The deposit was unprotected for the entirety of the tenancy;
- (f) The deposit was repaid in full within a couple of days of the tenancy ending.

The Tribunal attached significant weight to those factors in reaching a determination. The Respondent had admitted and documented knowledge of his obligation to protect the deposit, had attempted to unsuccessfully protect the deposit and failed to take any further steps to protect it until the intervention of the Applicant's Solicitor in September 2023.

Whilst the Tribunal appreciate and accept the pressures on the Respondent in relocating his family to Canada and caring for an infirm relative neither of these mitigate his blatant failure to protect the deposit and take no further steps to do so in the knowledge he was not complying with his legal obligations.

The Tribunal consider and find that this was not a breach that could be said to have been at the lower end of the scale given his knowledge and actions in attempting to protect the deposit and his subsequent inaction. Nor could it be said this was a breach which should have been at the higher end of the scale as there was no deliberate or fraudulent intent by the Respondent. This was not a case where there had been repeated breaches. Further, he had accepted the fault on his part and no financial loss had been sustained by the Applicant.

In the circumstances the Tribunal considered the breach to be towards the middle end of the scale. The Tribunal considered the sum of £4,000 to be a fair, proportionate and just sanction in the circumstances of the 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.

A. Strain

11 March 2024

Legal Member

Date