



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

Chamber Ref: FTS/HPC/PR/23/3536

Re: Property at Flat 9, 4 Brunswick Road, Edinburgh, EH7 5NG (“the Property”)

Parties:

Miss Simran Sandhar, Flat 9, 4 Brunswick Road, Edinburgh, EH7 5NG (“the Applicant”)

Ms Ayesha Sodha, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for payment in the sum of EIGHT HUNDRED POUNDS (£800)

Background

1. The applicant submitted an application seeking an award under regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The application was accepted on 11th October 2023.
2. The following documents were lodged with the application :
 - Deposit Protection Certificate from my deposits Scotland tenancy deposit scheme.
 - Bank statement showing evidence of payment of deposit
 - Deposit Protection Certificate for a previous tenant.

3. The present application was conjoined with an application seeking payment of in respect of various outlays incurred by the tenant and seeking damages for harassment under reference number **FTS/HPC/CV/23/3556**.

Case management discussion (“cmd”) – teleconference – 22nd April 2024

4. The applicant represented herself at the cmd. The respondent was neither present nor represented. The Tribunal noted that service on the respondent had been by way of advertisement in terms of Rule 6a. The Tribunal proceeded with the cmd in the absence of the respondent in terms of Rule 29 as it was satisfied that Rule 24(1) had been complied with.
5. The applicant stated that the tenancy had commenced on 1st October 2021. The applicant had not received a tenancy agreement after she had moved into the property despite requesting one on a number of occasions. The applicant explained that she had found the property on Sparerooms.com a property letting website. She had been due to commence post-graduate studies at Edinburgh University and was looking for a property with bills included. She stated that she was very relieved to have found the property before term commenced due to the high demand on rented property in Edinburgh.
6. The applicant stated that her correspondence with the respondent prior to the tenancy commencing was mostly carried out through the Sparerooms.com website messaging platform.
7. The applicant advised that on the advertisement for the property it was stated that the deposit was £600 whilst the monthly rent was £625 which included council tax, internet and utility bills. The applicant stated that she paid the deposit of £600 plus three months rent when she moved into the property. This showed as a payment of £2475 on 24th September 2021 to the respondent on the applicant’s bank statement which had been lodged with the Tribunal.
8. The applicant stated that the deposit was placed in the tenancy deposit scheme on 31st May 2022 which meant that her deposit had been unprotected for seven months.
9. The applicant stated that as far as she was aware the respondent owned no other rental properties and the property had been the respondent’s former home.

10. The applicant stated that she was aware that a former tenant had difficulties in recovering their deposit from the respondent. The applicant stated that the previous tenant's deposit was unprotected for a period of one year when he resided in the property.
11. The applicant advised that she had moved out of the property and ended the tenancy in December 2023. She advised that the respondent had refused to return her deposit. The deposit became the subject of an adjudication by the tenancy deposit scheme. The applicant advised that the respondent had sought to withhold the entire deposit. The tenancy deposit scheme had made an adjudication that £605 be returned to the applicant. A deduction of £20 was made for failing to remove some items from the freezer.
12. The applicant sought to rely on the conduct of the respondent as a reason for seeking the maximum amount of three months rent under the regulations.

Findings in fact

13. Parties entered into a tenancy agreement with a commencement date of 1st October 2021.
14. A deposit of £600 was paid to the respondent at the commencement of the tenancy. A sum of £625 was subsequently paid into the tenancy deposit scheme however the contractual deposit was £600.
15. The tenancy terminated in December 2023.
16. The respondent failed to return the deposit to the applicant at the end of the tenancy period and the issue was referred to the tenancy deposit scheme for adjudication.
17. Following an adjudication by my deposits Scotland tenancy deposit scheme the applicant was awarded £605 of the £625 which had been placed in the scheme.
18. The respondent had failed to lodge the deposit in a tenancy deposit scheme as required in terms of regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011/176 **for a period of seven months from the commencement of the tenancy.**

Reasons for Decision

19. The Tribunal took into account the applicant's written and oral submission and the various documents lodged with the application.
20. The Tribunal was satisfied that the respondent had failed to place the deposit in a suitable tenancy deposit scheme for a period of seven months..
21. The Tribunal was satisfied that a tenancy agreement to which the regulations applied had been created. The Tribunal was also satisfied that the present action was raised within three months of the termination of the tenancy. Accordingly, regulation 10 applied.
22. In assessing the appropriate amount of sanction under Regulation 10(a) of the regulations the Tribunal took the following factors in account.
23. In this case the applicant's deposit had been unprotected for a period of seven months. The Tribunal considered the respondent's refusal to repay the deposit at the end of the tenancy to be an aggravating factor . This led the Tribunal give weight to the fact that that the deposit was at real risk during the seven month period.
24. The Tribunal also took into account the applicant's evidence that another tenant had experienced difficulties with the respondent in relation to their deposit. The Tribunal found the applicant to be credible and believable in her evidence and had no reason to disbelieve her evidence on this point.
25. The Tribunal took into account and gave weight to the fact that that the respondent did place the deposit in a tenancy deposit from 31st May 2022 and accordingly for the majority of the tenancy duration it was properly protected. The Tribunal also gave weight to the fact that the applicant had suffered no loss as a result of the respondents failure to comply with the regulations.
26. The Tribunal took into account the respondents failure to attend the cmd without explanation or to put forward any further submissions in respect of the matter or setting out their position on an appropriate level of sanction.
27. The legal test to be applied in determining the level of sanction is set out in *Jenson v Fappiano* 2015 G.W.D. 04-89 and subsequent case law. Those authorities are reviewed by Sheriff Cruickshank in *Ahmed v 3 Russell* 2023 S.L.T. (Tr) 33 and confirm the Tribunal should seek to assess a sanction that is "fair and proportionate" in all the circumstances, taking into account both aggravating and mitigating circumstances.

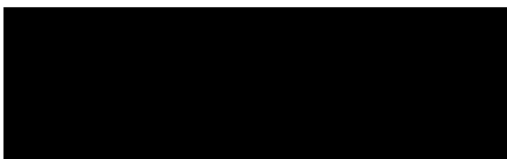
28. Having regard to the foregoing factors and the weight attached to each of them, and that the maximum sanction is £1800 (three times the deposit of £600) the Tribunal assesses a fair and proportionate sanction in the sum of £800.

Decision

29. The appellant is ordered to pay the respondents the sum of £800 in terms of regulation 10(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

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.



M-C. Kelly

Legal Member/Chair

22nd April 2024

Date