



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Procedure Regulations”) and The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/24/0120

Re: Property at 73b High Street, Irvine, KA12 0AL (“the Property”)

Parties:

Mr David Curley, Ms Charlene Presley, 4b Peel View, Clydebank, Dumbartonshire, G81 2EZ (“the Applicant”)

Miss Yan Li, 73b High Street, Irvine, KA12 0AL (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application be refused.

Background

1. By application received on 10 January 2024, as subsequently amended, the Applicant applied to the Tribunal for an order for payment against the Respondent in respect of failure to carry out duties in relation to a tenancy deposit. The failure alleged was a failure to lodge the whole amount of the deposit (£695 rather than £700) with an approved scheme and failures in the duties to provide information relating to the tenancy deposit scheme to the Applicant. Supporting documentation was lodged in respect of the application, including a copy of the tenancy agreement, proof of the end date of the tenancy and the Respondent’s handwritten request for payment of the deposit of £700 and the first months’ rent of £700 at the outset of the tenancy. The Applicant sought the maximum sanction against the Respondent of three times the amount of the tenancy deposit.

2. On 31 January 2024, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. On 2 April 2024, a copy of the Application and supporting documentation was served on the Respondent by Sheriff Officer, together with intimation of the date, time and arrangements for a Case Management Discussion (“CMD”) to take place by telephone conference call on 3 May 2024 at 2pm. Details of the CMD were also notified to the Applicant by email dated 25 March 2024.
4. On 26 April 2024, the Respondent emailed her written representations in response to the Application, together with supporting documentation to the Tribunal. She explained that her representations were late as she had just returned from holiday and received the Tribunal paperwork. The Legal Member noted that one of the attachments mentioned by the Respondent in her emails of 26 April was not attached to her emails, namely a screenshot of her bank statement from 12 August 2020. This was requested from the Respondent by email on the morning of 3 May 2024 and was then submitted and circulated. The Respondent’s position was that she was not in breach of the duties alleged by the Applicant in relation to the lodging of the deposit and the information provided to the Applicant. No communications were received from the Applicant in response prior to the CMD.

Case Management Discussion

5. On 3 May 2024, the Respondent, Ms Yan Li, joined the telephone conference CMD at 2pm. The commencement of the CMD was delayed for 5 minutes to see if the Applicant joined the conference call but they did not. At the Legal Member’s request, the Clerk tried to contact the Applicant, Mr David Curley, several times on his mobile telephone number but it was not answered. Accordingly, the Legal Member decided to proceed and commenced the CMD at 2.10pm.
6. After introductions and introductory remarks by the Legal Member, the Respondent, Ms Li, referred to the documentation she had lodged with the Tribunal and explained some further background details. She also answered some questions from the Legal Member. Ms Li explained that, at the outset of the tenancy, she had asked for the sum of £1,400 to be paid in advance, £700 for the first month’s rent and £700 for the deposit. The Applicant was in Belfast at the time and all communications were done remotely. The Applicant did not pay the full amount requested. They paid the total sum of £1,390, via two bank transactions on 12 August 2020, one for £1,380 and the second for £10. Rather than further chasing for the shortfall of £10, Ms Li explained that she split the £1,390 and took this to be £695 for rent and £695 for the deposit. This is why the amount she subsequently lodged with the tenancy deposit scheme was £695 rather than £700. She referred to the Tenancy Deposit Certificate from My Deposits Scotland confirming this as the amount lodged.

7. As to the allegations that she had failed in the information duties in relation to the scheme, Ms Li denies this. She stated that the reason the tenant, Mr Curley's name, was not on the Certificate was that, at that time, My Deposits Scotland, only asked for the name of one tenant (the "lead" tenant) to be provided. In this case, the lead tenant on the lease was the other Applicant, Ms Charlene Presley, so it was only her name that appears in the Certificate. Ms Li explained that My Deposits Scotland has since changed its system and now allows joint tenant details to be inserted but that was not the case at that time.
8. Ms Li further explained that she remembers going to a friend's house and taking two photocopies of the Certificate when she received this from My Deposits Scotland and that she then sent a copy to the Applicant by post around the end of September 2020. Ms Li said that a lot of her communications at that time with the Applicant were via Facebook Messenger and that she also sent a copy of the Certificate to the Applicant, Ms Presley, by that method. Ms Li stated that she is unable to provide proof of this because, although she has some records dating back to that time, she does not have a copy of this particular communication as her Facebook account was subsequently hacked. Ms Li said that Ms Presley would be able to confirm this as all their more recent communications are via Whatsapp.
9. As to the non-return of the tenancy deposit to the Applicant, Ms Li confirmed that they suddenly left the Property without giving her any notice, that their rent account was in arrears, that there were outstanding utility bills and repairs required to the Property. They went through the tenancy deposit scheme dispute resolution procedure and Ms Li confirmed that she was awarded return of the whole deposit of £695 which she received around three weeks ago. Ms Li said that she is owed significantly more than that by the Applicant and this is the reason she refused to return the deposit to them.
10. Ms Li denies any breach of the tenancy deposit regulations. She confirmed that she is aware of her obligations relating to tenancy deposits and the regulations as she is an experienced landlord and lets out some other properties too.
11. At this point, around 2.25pm, the Clerk received a telephone call from the Applicant, Mr Curley, who advised that he was in hospital and had not been aware of the CMD today. He was advised that he had been notified by email, that the CMD was already underway and was asked if he was requesting a postponement. He indicated that he was content for the CMD to proceed in his absence.
12. The Legal Member noted that the Applicant had been notified of the CMD by email dated 25 March 2024, sent to his correct email address. In the circumstances, the Legal Member considered that it was appropriate for the CMD to proceed to a conclusion, in the absence of the Applicant. The position was explained to the Respondent.
13. The Legal Member considered the application and confirmed that she was satisfied that it had not been established that there had been any breach of the

2011 Regulations by the Respondent and, accordingly, that the Applicant's application for a payment order against the Respondent was refused.

Findings in Fact

1. The Respondent is the landlord of the Property.
2. The Applicant was the joint tenant of the Property by virtue of a Private Residential Tenancy commencing on 28 August 2020 and ending on or around 17 November 2023.
3. The tenancy agreement provides for a tenancy deposit of £700 and the first month's rent of £700 to be paid by the Applicant in advance and the sum of £1,400 was accordingly requested by the Respondent prior to the commencement of the tenancy.
4. The Applicant paid the total sum of £1,390 to the Respondent on 12 August 2020 which was £10 short of the £1,400 which had been requested.
5. The Respondent allocated half of the sum received, namely the sum of £695, towards the advance rent and the remaining £695 towards the deposit.
6. The Respondent lodged the sum of £695 in a tenancy deposit scheme with My Deposits Scotland on 28 September 2020.
7. The deposit of £695 has subsequently been returned to the Respondent, following the tenancy ending and the dispute resolution procedure being concluded by My Deposits Scotland.
8. The Respondent provided My Deposits Scotland with correct details of the tenancy, as required at that time, when lodging the tenancy deposit with them.
9. My Deposits Scotland issued a Tenancy Deposit Certificate confirming these tenancy details in respect of this deposit.
10. The Respondent sent a hard copy of the Certificate to the Applicant by post and a screenshot of same via a messaging app in or around the end of September 2020.

Reasons for Decision

11. The Applicant has not submitted any contrary information in response to the Respondent's written representations and supporting documentation lodged with the Tribunal, and did not attend the CMD, having been properly and timeously notified of same. Furthermore, the Applicant, Mr Curley, on making contact with the Clerk during the CMD, indicated that he was not requesting a

postponement and was content with the CMD continuing in the Applicant's absence.

12. The Legal Member considered carefully the terms of the application and supporting information lodged by the Applicant, together with the written representations and documentation lodged by the Respondent and her oral submissions made at the CMD. The Legal Member was not satisfied that the Applicant's claim had been made out. Although the tenancy deposit amount stated in the lease was £700 and the amount placed in the scheme was £695 (£5 short), the Legal Member was persuaded that the Respondent had provided good reason for this, namely that she had only received the sum of £695 towards the deposit from the Applicant. The Respondent's explanation was substantiated by the entries from 12 August 2020 shown in the extract from her bank account which had been lodged with the Tribunal. The Tribunal was also satisfied from the evidence of the Respondent that she had provided all necessary and correct details concerning the tenancy to the tenancy deposit scheme concerned when lodging the deposit with them. It was noted by the Legal Member that the Applicant, Ms Presley, was the first-named tenant in the joint tenancy agreement and that this accorded with the Respondent's explanation as to why Ms Presley was the named tenant (or "lead" tenant) in the scheme's records. Finally, the Legal Member considered that the Respondent had provided detailed and credible evidence as to having provided the Applicant with all the information required concerning the tenancy deposit scheme, by issuing the Applicant with copies of the Tenancy Deposit Certificate, within the timescale required, in terms of Regulation 42 of the 2011 Regulations which states as follows:-

"42.—(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).

(2) The information is—

(a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;

(b) the date on which the tenancy deposit was paid to the scheme administrator;

(c) the address of the property to which the tenancy deposit relates;

(d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;

(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and

(f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.

(3) The information in paragraph (2) must be provided—

(a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or

(b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.”

The Legal Member also noted that the deposit was lodged with the same tenancy deposit scheme provider identified in the tenancy agreement entered into between the parties.

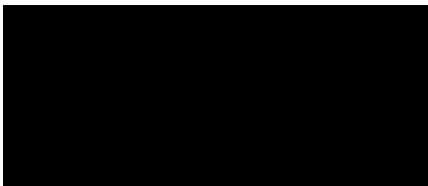
13. In these circumstances, the Legal Member therefore concluded that the application does not require to go to an Evidential Hearing and that the order for payment sought by the Applicant under Rule 103 of the Procedure Regulations could properly be refused at the CMD.

Decision

The Legal Member accordingly determined that the payment order sought should be refused.

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

3 May 2024
Date