



**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/23/3797

Re: Property at 7 Gladstone Place, Kirkcudbright, DG6 4DT (“the Property”)

Parties:

**Ms Ellie Mottram, Connor Kirkpatrick, 1/2 3 Mansionhouse Road, Paisley, PA1
3RG (“the Applicant”)**

**Ms Angela Sinclair, Parklea, 27 Station Road, Newton Stewart, DG8 6LJ (“the
Respondent”)**

Tribunal Members:

Melanie Barbour (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that there had been a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011, and it would make an order for payment of £750.00 in favour of the Applicant.

Background Discussion

1. An application was made to 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 (“the 2017 Rules”) seeking an order against the landlord failure to lodge a tenancy deposit.

2. The application contained:-
 - a. Tenancy agreement;
 - b. Evidence of end of tenancy
 - c. Evidence from approved deposit schemes that they held no deposit for the property

3. The case called for a case management discussion (CMD) on 22 April 2024. Both parties appeared. The applicant appeared with her representative Mr Montgomery from Renfrew CAB. The application had been served by sheriff officers on 22 March 2024. The respondent had submitted written representations for the CMD 15 April 2024. The applicant had read those submissions.

Hearing

4. The respondent admitted the breach of the regulations. She apologised for her error. She advised that she had been unaware that she should have placed the deposit into an approved tenancy deposit scheme. She only became aware of this on 22 March 2024 when she tried to put her new tenant's deposit into a scheme. She found out she could not place two deposits into a scheme for the same property.

5. She had offered to repay the deposit to the applicants by email on 5 April 2024. She had received no response to that email. She was happy to repay it.

6. She admitted that she was in the wrong for not putting the deposit into a scheme. She advised she was happy to make amends and repay the sum of £580. She accepted that the tribunal could impose an order of three times the rent as a penalty.

7. She admitted that the applicants had paid the deposit when they moved in. She had one property which she let out. Previously it was only let to family members, and these were the first tenants she had let it out to who were not family. She put her hands up and admitted she had to pay something as a penalty. She had not been aware of the duty to secure the tenancy deposit until March 2024. She had now lodged the new tenants' deposit.

8. She had downloaded the tenancy agreement and completed the sections which needed completing, she admitted she had not read it properly. She stated it was 79 pages long and she had not fully understood it.
9. She advised that she had not repaid the deposit to the applicants as they had left the property in need of redecoration. She advised that they had marked the walls with blue tack. They had kept a cat without permission, it had torn the curtains. Curtains needed to be replaced and walls needed to be repainted. There were cat faeces on the carpets and she had had to replace the carpets after the applicants left.
10. The applicant agents noted that the landlord accepted the breach. He agreed that the landlord had recently offered to repay the deposit but no money had yet been paid. He submitted that the tenancy agreement states that the money would be put into safe deposit scheme. The landlord had to add this information and therefore must have known about it. He submitted that this was a medium breach of seriousness, the deposit was not protected for the whole of the tenancy, and it had not been paid back at the end of the tenancy. The applicants believed that the landlord had had other tenants before who were not family members.
11. The landlord had refused to repay it at the end of the tenancy as she said that she wanted it for redecoration, and this was exactly why the deposit regulations were in place.
12. The applicants had moved away from the area to the city and they had to get a new tenancy, it had been more difficult to do so given that they did not have their deposit to pay for a new tenancy, it had caused inconvenience to them. They still did not have it back. They agreed the landlord had emailed on 5 April to offer to repay it. The applicants thought they should wait for the outcome of the tribunal proceedings before accepting the offer. The applicant strenuously disputed that the property had been left in a poor condition.
13. The respondent advised that she had nothing to add except to apologise. She advised that she could repay it today money was in her bank account and she put her hands up

Findings in Fact

14. The Tribunal made the following findings in fact:-
15. The Respondent, Angela Sinclair was the landlord,
16. The Applicants Ellie Mottram and Connor Kirkpatrick were the tenants.
17. The tenancy commenced on 15 April 2022.
18. The Applicants had paid the Respondent a tenancy deposit on around 15 April 2022 of £580.
19. A tenancy agreement was in place between the respondent and the applicants. The tenancy was a relevant tenancy in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
20. The tenancy ended on 15 August 2023.
21. For the duration of the tenancy the tenancy deposit of £580 had not at any time been placed in an approved scheme.
22. The tenancy had not been repaid as at 22 April 2024.
23. The landlord had offered to repay it in an email of 5 April 2024.
24. After 15 August 2023, the applicants asked about for the deposit to be returned. The respondent refused to do so due to alleged damage to the property and to cover the cost of repair and redecoration. The applicants disputed the respondent's allegations about damage to the property.
25. The respondent was a landlord and let out 1 property.
26. The respondent said that she was not aware of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

27. Clause 10 of the tenancy agreement provides that a deposit of £580 will be paid by the tenant and that it would be placed in an approved scheme, namely Safe-deposits Scotland.

28. The application to the first-tier tribunal was made on 27 October 2023.

29. The tenancy deposit paid by the applicants had not been lodged with an approved tenancy deposit scheme within 30 working days of the tenancy commencing.

Discussion

30. The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits, and relevant to this case are the following regulations:-

Duties in relation to tenancy deposits

3.— (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.

Sanctions

9.— (1) A tenant who has paid a tenancy deposit may apply to the [First-tier Tribunal] 1 for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit. (2) An application under paragraph (1) must be made [...]2 no later than 3 months after the tenancy has ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the [First-tier Tribunal] 1 — (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and (b) may, as the [First-tier Tribunal] 1 considers appropriate in the circumstances of the application, order the landlord to— (i) pay the tenancy deposit to an approved

scheme; or (ii) provide the tenant with the information required under regulation 42.

31. Part 9 of the regulations deals with transitional provisions.

Transitional provisions

47. 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)—

(a) where the tenancy is renewed, by express agreement or by the operation of tacit relocation, on a day that falls three months or more, but less than nine months, after the first day on which an approved scheme becomes operational, the date of that renewal;

(b) in any other case, the date which falls nine months after the first day on which an approved scheme becomes operational.

32. The tribunal finds that a relevant tenancy existed. It is a matter of admission by the respondent that there was a deposit paid and that it was not paid into an approved scheme. The deposit was not placed in a tenancy deposit scheme within 30 days of the deposit being paid. The application was made timeously to the tribunal.

33. The Respondent accepted that no deposit had been paid into an approved scheme in accordance with the terms of the regulations, therefore, the terms of regulation 10 are engaged, and the tribunal must order that the Respondent pay the Applicant an amount not exceeding three times the amount of their tenancy deposit. The amount to be paid is required to be determined according to the circumstances of the case, the more serious the breach of the regulations the greater the penalty.

34. In this case, I consider that a sum of £750 would be appropriate. I find that there has been a breach of the regulations. I consider that the breach to be fairly serious.

35. My reasons for this are that: For the duration of the tenancy the deposit was not secured. The tenancy ended over 6 months ago and the deposit has still not been repaid to the applicants. The landlord prepared the tenancy agreement and must have added text into clause 10 dealing with the deposit and I do not accept as a reasonable explanation that she did not read or understand the agreement.

36. Importantly at the end of the tenancy, the deposit was not repaid to the applicants, as the respondent considered that she should be entitled to withhold the deposit to pay for redecoration/replacement. It is noted that the applicants dispute this. This in my opinion is the most important factor, the failure to lodge the deposit into an approved scheme prevented the applicants from being able to challenge the respondent on this point. This is the very mischief that the regulations are intended to address. I consider that this is the most serious factor in determining what penalty to impose in this case. I also note that there was no offer to repay the deposit until after this application had been served on the respondent.
37. In mitigation, I note that the respondent has accepted the breach and also accepts that she will have to pay a penalty for this breach. I place some weight on her admission in mitigation. In addition, I am prepared to accept that she only has one property and she does not appear to be a very experienced landlord. I am also prepared to accept that she would appear to have lodged her current tenant's deposit into a scheme. It does appear that she now appreciates the importance of the regulations and her duties under them. The timing of submitting her new tenant's deposit appears to coincide with the tribunal papers being served on her, which would support her position that she was not previously aware of her duties under the tenancy deposit regulations.
38. I place some weight in mitigation on the fact that the tenancy was not a long tenancy, but not a lot given that the deposit was never secured and has not yet been repaid.
39. The respondent indicated that she would now be prepared to repay the deposit but as of the date of the case management discussion, she had not done so. I place little weight on her offer to repay it, as the deposit remains unpaid.
40. In weighing up matters I find that the breach is fairly serious as the respondent prepared the tenancy agreement, the deposit remains unpaid and importantly, the applicants had no ability to challenge the respondent's retention of their deposit through the approved scheme process. Given all of the above, I shall impose a penalty of £750.

Decision

41. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that there had been a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011, and it would make an order for payment of £750.00 in favour of the Applicant.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal’s decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

M. Barbour

24 April 2024

Legal Member/Chair

Date