



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/21/0209

Re: Property at 6 Malvina Place, Perth, PH1 5DY (“the Property”)

Parties:

Mrs Gail Ramsay-Quinn, 62 Duncansby Way, Perth, PH1 5XF (“the Applicant”)

Mr Steven Carr, 2 Fairhill Drive, Perth, PH1 1RS (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision

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

Background

This is an application dated 12th January 2021 brought in terms of Rule 103 (Application for order for payment where landlord has not paid the deposit into an approved scheme) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended. The application is made under Regulation 9 of the *Tenancy Deposit Schemes (Scotland) Regulations 2011* (“the 2011 Regulations”).

The Applicant seeks payment of compensation in respect of an alleged failure by the Respondent to pay the deposit she provided of £530.00 in relation to the tenancy agreement into an approved scheme within 30 days of receipt of that sum.

The Applicant provided with her application copies of a tenancy agreement, and various mobile phone text messages between the Applicant and the Respondent.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 19th February 2021, and the Tribunal confirmed execution of service.

The Case Management Discussion

A Case Management Discussion was held on 24th March 2021 by Tele-Conference. The Applicant participated, and was not represented. The Respondent participated, and was not represented.

The Applicant explained that she had paid the deposit of £530.00 to the Respondent at the commencement of the tenancy on 1st June 2014.

The Applicant stated that the deposit had not been paid into an approved scheme within 30 days of the commencement of the tenancy, and sought compensation. She explained that it was only after she asked for the return of her deposit after the tenancy ended on 30th November 2020, that the Respondent lodged it with an approved scheme at her request on 5th January 2021.

The Respondent, to his credit, was very candid in accepting that the Applicant paid the deposit of £530.00 in June 2014, and that he had not paid the deposit into an approved scheme until January 2021.

The Respondent explained that he was not a professional landlord. He had commenced renting out the Property, which was his former home, after he had been unable to sell it after moving house.

The Respondent is inexperienced in letting property, and only did so in relation to the Property as a result of being unable to sell it. He does not rent out any other properties, and has not previously rented out other properties.

The Respondent produced confirmation that he had lodged the deposit in an approved scheme on 5th January 2021. He also produced documents confirming that he has had an account with an approved scheme since 2012, and that he paid a previous and subsequent tenant's deposit into that account.

The Respondent believed that he had paid the deposit into the scheme in 2014. It was only when arranging for its release at the end of the tenancy, that it became apparent that the deposit had not been lodged, which he could only conclude was due to oversight on his part and for which he fully accepted responsibility and apologised.

As soon as he realised the deposit had not been lodged, he immediately informed the Applicant, and thereafter at her request lodged the deposit in the approved scheme.

The Applicant confirmed that she did not dispute the Respondent's account of events, and was content to leave the question of the level of compensation to the judgement of the Tribunal.

Reasons for Decision

This application was brought timeously in terms of regulation 9(2) of the 2011 Regulations.

Regulation 3 of the 2011 Regulations (which came into force on 7th March 2011) provides as follows:

- “(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.”

The Respondent as landlord was required to pay the deposit into an approved scheme. He accepted that he failed to do so.

Regulation 10 of the 2011 Regulations provides as follows:

- “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; and
 - (b) may, as the First-tier Tribunal 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.”

The Tribunal is satisfied that the Respondent did not comply with his duty under regulation 3, and accordingly it must order the Respondent to pay the Applicant an amount not exceeding three times the amount of the tenancy deposit.

In the case of *Jenson v Fappiano* 2015 G.W.D 4-89, Sheriff Welsh opined in relation to regulation 10 of the 2011 Regulations that there had to be a judicial assay of the nature of the non-compliance in the circumstances of the case and a value attached thereto which sounded in sanction, and that there should be a fair, proportionate and just sanction in the circumstances of the case. With that assessment the Tribunal respectfully agrees.

In the case of *Tenzin v Russell* 2015 Hous. L. R. 11, an Extra Division of the Inner House of the Court of Session confirmed that the amount of any award in respect of regulation 10(a) of the 2011 Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.

In determining what a fair, proportionate and just sanction in the circumstances of this application should be, the Tribunal took account of the facts that the Respondent had no specialised knowledge of housing law or regulations; that he did not engage in the

letting of property on a commercial basis; that he believed that he had lodged the deposit in his account with an approved scheme at the commencement of the tenancy; that he had immediately upon realising that the deposit had not been lodged, apparently through his own oversight, contacted the Applicant, explained what had happened, and complied with her request that the deposit be lodged; and that he accepted at the first opportunity before the Tribunal that he was at fault and had contravened Regulation 3 of the 2011 Regulations.

In these circumstances, the Tribunal considers that the foregoing factors do represent mitigation in respect of the sum to be awarded in the exercise of its judicial discretion.

However, balanced against these mitigating factors, are the fact that the Respondent received payment of the deposit in June 2014 and did not comply with his legal obligations as a landlord with respect to the 2011 Regulations, which regulations have been enacted to provide protection to tenants in respect of their deposit and ensure that they can obtain repayment of their deposit at the conclusion of the lease, and the fact that the period during which the deposit was not lodged in an approved scheme and during which the Applicant did not have the security provided by such lodging was lengthy (approximately six and a half years).

Balancing these various competing factors in an effort to determine a fair, proportionate and just sanction in the circumstances of this application, the Tribunal considers that the sum of £530.00 is an appropriate sanction to impose.

Decision

For the foregoing reasons, the Tribunal orders the Respondent in respect of his breach of Regulation 3 of the 2011 Regulations to make payment to the Applicant of the sum of £530.00 in terms of Regulation 10(a) of the 2011 Regulations.

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.

Neil Kinnear

24/03/21

Legal Member/Chair

Date