



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 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/21/0736

Re: Property at 0/2, 51 Oakfield Avenue, Hillhead, Glasgow G12 8LL (“the Property”)

Parties:

Miss Priyamvadaa Sharma, Flat 19, Block C Varada Rbi, Senior Officers Flats VS Road, Dadar Wesy, Near Kirti College, Mumbai, Maharashtra, 400028, India (“the Applicant”); and

Mr Shahed Quayum and Mrs Farah Abdul-Quayum, 15 Newark Drive, Pollokshields, Glasgow, G41 4QB (“the Respondents”),

Tribunal Members:

G McWilliams (Legal Member) and L Forrest (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines that an order for payment by the Respondents to the Applicant of the sum of £1500.00, in terms of Regulation 10(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”), should be made.

Background

1. This Application, dated 16th May 2019, was brought under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”) (Application for an order of payment where a landlord has not paid the deposit into an approved Scheme) of the First-Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017

Rules”) and Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).

Case Management Discussion

2. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call on 27th May 2021. The Applicant and the second Respondent Mrs F Abdul-Quayum attended. Reference is made to the Notes on the CMD.

Hearing

3. A Hearing proceeded remotely by video conference call on 13th July 2021. The Applicant and both Respondents attended. The first Respondent, Mr S Quayum, stated to the Tribunal that the second Respondent, his wife Mrs Abdul-Quayum, would give evidence and make submissions on behalf of both Respondents.
4. The Applicant and Mrs Abdul-Quayum had lodged further written representations and documentation with the Tribunal prior to the Hearing and these had been crossed over.

Evidence and Submissions

5. The Applicant and Mrs Abdul-Quayum gave oral evidence, asked questions of each other and made submissions. They referred to the representations and documentation which they had lodged whilst doing so. The Tribunal also asked clarifying questions of the Applicant and Mrs Abdul-Quayum whilst they were giving evidence and making submissions.
6. The Applicant stated she had never entered into a private residential tenancy agreement before she commenced her tenancy of the Property in September 2020. She said that she had found Mrs Abdul-Quayum to be very sweet when they entered into their tenancy agreement. She said that Mrs Abdul-Quayum asked her to sign specific pages of a written tenancy agreement and she trusted her and did so. The Applicant said that she paid a deposit of £750.00 to Mrs Abdul-Quayum, on the latter’s request, at the commencement of the tenancy. She stated that Mrs Abdul-Quayum told her that she would have the deposit returned to her at the end of the tenancy. The Applicant emphasised that Mrs Abdul-Quayum made reference to a deposit having been paid in an exchange of messages between them, on 2nd and 3rd March 2021. The Applicant had lodged copies of the parties’ messages. The Applicant referred to Shelter Scotland’s definition of “deposit”. She stated that she relied on what was said to her by Mrs Abdul-Quayum at the start of their agreement and was not concerned that Mrs Abdul-Quayum had referred to the deposit as being “zero” in the parties’ written

tenancy agreement. The Applicant said that, in the circumstances, she did not ask Mrs Abdul-Quayum regarding the deposit reference when she signed the agreement. The Applicant further stated that Mrs Abdul-Quayum's position in these proceedings, that there was no deposit paid, was untrue. The Applicant stated that she was ignorant of Housing Law and Regulations when the tenancy commenced and that she had educated herself regarding these since lodging this Application, in March 2021. She said that, having done so, she now considered that Mrs Abdul-Quayum's position, that she was paid an extra month's rent rather than a deposit, was the latter's attempt to circumvent the requirement on landlords to lodge tenancy deposits in an approved deposits scheme.

7. The second Respondent Mrs Abdul-Quayum stated that the Applicant had read through the parties' written tenancy agreement, and asked about the deposit provision, before signing it. Mrs Abdul-Quayum said that she used the term "deposit" in messages between the parties, on 2nd and 3rd March 2021, as this was the term used by the Applicant. Mrs Abdul-Quayum expressed her frustration with housing law that stipulated a 28 day notice period for ending tenancies. She believed that this was disadvantageous to landlords. Mrs Abdul-Quayum further stated that she rents 15 properties and that a few were let through letting agents who use their own tenancy agreements and take and lodge deposits with Safe Deposits Scotland. Mrs Abdul-Quayum said that when letting properties herself she took one additional month's rent at the commencement of the tenancies as she felt that this helped to protect her in circumstances where tenants said they could not pay their last month's rent. Mrs Abdul-Quayum said that tenants often told her to take their last month's rent from their deposit. She said that she had never previously had a dispute with a tenant at the end of a tenancy agreement. She stated that when she rents her properties herself she decides on what happens with the additional month's rent paid at the outset of the tenancy. She stated that she may take cleaning costs from those monies. Mrs Abdul-Quayum said that the Applicant had stayed on in the Property for around two of the four weeks' notice period. When asked a question in this regard by the Tribunal Mrs Abdul-Quayum was unclear regarding the Applicant's right to remain in the Property for the extent of the notice period. Mrs Abdul-Quayum agreed that no monies had been repaid to the Applicant following the ending of the tenancy.
8. The Applicant submitted that she had tried to resolve the issue regarding her deposit when the tenancy ended but her calls and emails to Mrs Abdul-Quayum had gone unanswered at that time. She acknowledged that Mrs Abdul-Quayum had contacted her and sought to resolve things, during a pause at the CMD and also on the day prior to the Hearing, 12th July 2021. The Applicant submitted that the Respondents had obtained a deposit from her and not paid it into an approved Deposits Scheme, which they were legally required to do. She said that she wished the Tribunal to determine the Application.
9. The Respondent Mrs Abdul-Quayum submitted that she had not taken a deposit, and that she had sought to resolve matters.

Findings in Fact and Law

10. The parties tenancy agreement ended on 15th March 2021. This Application was lodged in papers sent to the Tribunal between 22nd March 2021 and 1st April 2021, within 3 months of the ending of the tenancy. The Application was brought timeously in terms of Regulation 9 of the 2011 Regulations.
11. The Applicant paid a deposit of £750.00 to the Respondents at the commencement of the parties' tenancy agreement in September 2020.
12. The Respondents did not pay the deposit into an approved tenancy deposits scheme. In not doing so the Respondents failed to comply with the terms of the Regulation 3 of the 2011 Regulations.
13. The Tribunal must order that the Respondents make payment of a sanction to the Applicant in terms of Regulation 10 of the 2011 Regulations.
14. The Applicant is resident in India and, as her deposit was not protected in an approved tenancy deposits scheme and not repaid to her by the Respondents, she has suffered inconvenience in having to proceed with the Application.
15. A sanction of two times the deposit monies of £750.00, in the sum of £1500.00, is a fair, proportionate and just sanction.

Reasons for Decision

16. The Tribunal found that the Applicant's evidence, that such a deposit sum was paid, was consistent with the terms of the Respondent Mrs Abdul-Quayum's messages, sent to the Applicant on 2nd and 3rd March 2021, in which Mrs Abdul-Quayum, herself, referred to a deposit having been paid. Mrs Abdul-Quayum also made reference to a deposit in her oral evidence at the Hearing. The Tribunal found that the "zero" deposit reference in the tenancy agreement was inconsistent with the parties' oral evidence and the terms of their messages. The Tribunal placed greater weight on the latter. Accordingly, having considered all of the oral and documentary evidence in this regard, the Tribunal found, on a balance of probabilities, that the Respondents obtained a deposit of £750.00 from the Applicant at the commencement of the parties' tenancy agreement.
17. 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.”

18. The Respondents, as landlords, were required to pay the deposit into an approved scheme. The parties were agreed that this was not done. The Tribunal accordingly determined that the Respondents did not comply with Regulation 3 of the 2011 Regulations.

19. 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.”

20. The Tribunal was satisfied that the Respondents did not comply with their duty under Regulation 3, and accordingly had to make an order that the Respondents pay the Applicant an amount not exceeding three times the amount of the tenancy deposit.

21. In the case of *Jenson v Fappiano* 2015 G.W.D 4-89, Sheriff Welsh, in relation to Regulation 10 (a) of the 2011 Regulations, was of the opinion that there had to be a judicial analysis of the nature of the non-compliance in the circumstances of the case and a value attached to reflect a sanction which was fair, proportionate and just given those circumstances. Sheriff Welsh was of the opinion that, when determining the sanction value, the starting point was not the maximum award to be discounted by mitigating factors. He considered that this would be inconsistent with the exercise of balanced, judicial discretion.

22. In the case of *Tenzin v Russell* 2015 Hous. L. R. 11, the Court of Session reiterated that the amount of any payment in terms of Regulation 10(a) of the 2011 Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.

23. In determining a fair, proportionate and just sanction in the circumstances of this Application, the Tribunal considered and weighed all of the evidence and factors. The Respondents did not comply with the relevant Regulations. The Respondents, in the evidence and submissions made by Mrs Abdul-Quayum, had maintained that a deposit was not taken. The Tribunal found that a deposit was taken but was not paid into an approved scheme. As the deposit was not repaid to her, the Applicant had to proceed with this Application to have a

determination made by the Tribunal. The Tribunal found that as the Applicant is resident in India she would have, of necessity, suffered inconvenience in having to proceed, in particular given the time difference and distance between India and Scotland. The Tribunal also found that as the deposit was not lodged in an approved tenancy deposits scheme, and was unprotected for the duration of the parties' tenancy agreement between September 2020 and March 2021, the Applicant was prejudiced during that period.

24. Having considered and weighed all of the evidence and factors, and exercised their judicial discretion, the Tribunal found, on a balance of probabilities, that the sum of £1500.00 (being twice the amount of the tenancy deposit) is an appropriate sanction to impose. The Tribunal found that this sum fairly, proportionately and justly reflected a sanction in respect of the Respondents' non-compliance with the Regulations. Accordingly the Tribunal determines that an order for payment by the Respondents to the Applicant of the sum of £1500.00, in terms of Regulation 10(a) of the 2011 Regulations, should be made.

Appeal

In terms of Section 46 of the Tribunals (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 within thirty day of the date the Decision was sent to them.

Gerald McWilliams

3rd September 2021

Legal Member