

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/PR/19/2382

Re: Property at Flat 2/2 78 Otago Street, Glasgow, G12 8PA (“the Property”)

Parties:

Miss Amie MacIndoe, Care of Flat 1/1, 40 Highburgh Road, Glasgow, G12 9EF (“the Applicant”)

Ms Dorothea Murrricane, 8 Rosslyn Terrace, Glasgow, G12 9NB (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £500 in terms of Regulation 10 (a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011(the Regulations) should be made.

BACKGROUND:

The Applicant Ms MacIndoe made an application under Rule 103 of the Rules of Procedure on 25.7.19 for payment under Regulation 10 (a) of the Regulations.

The Applicant submitted to the Tribunal the following documents:

1. unsigned document headed Assured Shorthold Tenancy Agreement (Scotland)
2. Letter from Respondent to Applicant dated 30 May 2019
3. Bank statement TSB 5.3.-28.3.18
4. Bank statement Monzo 23.11.18-27.6.19
5. Email 31.3.18 from Respondent to Applicant

A Case Management Discussion (CMD) was fixed for 29.11.19.

Both parties had been advised in the notification for the Case Management Discussion that the Tribunal may make a decision at that stage. The documentation including the notification of the date, time and venue of the CMD was served on the parties. The Tribunal was thus satisfied that due notice had been given to the parties of the CMD in terms of Rule 17 (2) of the Tribunal Rules of Procedure and that the parties were aware that the Tribunal could make a decision at the CMD in terms of Rule 18 of the Rules of Procedure.

Representations were received from the Respondent's solicitors Levy and MacRae on 19.11.19.

The Case Management Discussion:

The Applicant attended with her supporter Ms Smith
The Respondent attended with her supporter Ms Fabian and her solicitor Mr Park.

The Applicant's position as set out in her application and further spoken to at the CMD is that the deposit had never been paid into a registered scheme and that she had never been provided with the necessary information regarding the deposit by the landlord. She had moved out on 21.6.19 and asked for repayment of the deposit of £450. This was paid to her on 27.6.19. She was aware that someone else had now moved into the property.

She lodged a copy of the decision in case FTS/HPC/PR/18/1092 and referred to that case in her argument that the even if someone is an amateur landlord renting out property is by its very nature a professional arrangement and that ignorance is not a defence and as the Respondent is a registered landlord she should have been aware of her duties.

The Respondent confirmed that the funds received as a deposit were put in a bank account in her name but not in her day to day account and that the funds were not lodged with a registered scheme. Mr Park on behalf of the Respondent referred to the Upper Tribunal (UT) decision in case UTS/AP/19/0023 of 11 June 2019 and stated the circumstances in this case are very similar and in this case the Upper Tribunal upheld an award of £50 made by a tribunal against a landlord.

Both parties referred to their written submissions, which are referred to for their terms and held to be incorporated herein.

Both parties agreed that no hearing is required for this case and that the facts of the case are not in dispute.

The legal test:

In terms of Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (the Regulations) an application under that Regulation must be made within 3 months of the end of the tenancy.

In terms of Regulation 10 “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.”

In terms of Regulation 3 “(1) A landlord who had received a tenancy deposit in connection with a relevant tenancy must, within 30 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.”

In terms of Regulation 42 (2) the information includes

“ (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...

(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 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 of 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.”

Findings in fact:

1. The Applicant and the Respondents entered into a Private Residential Tenancy Agreement for the property on 18 March 2018.
2. The unsigned document emailed by the Respondent to the Applicant on 31 March 2018 was not in the format of the model Private Residential Tenancy and was headed Assured Shorthold Tenancy Agreement (Scotland).
3. It referred to the deposit being £450.
4. It made no reference to the deposit being paid into a registered scheme.
5. The Respondent was the landlord and owner of the property.
6. She is a registered landlord.
7. The Applicant paid a deposit of £450 to the landlord at the start of the tenancy period.
8. The tenancy started on 18 March 2018.
9. The tenancy ended on 21 June 2019.
10. The deposit was not lodged with an approved scheme for the whole duration of the tenancy.
11. The Respondent has only one rental property, which had originally been purchased for use for her children.
12. The person who moved in after the Applicant left the property is the Respondent's son.
13. The deposit was repaid on 27 June 2019 in full.

14. The Respondent was not aware of the duty to pay the funds into a registered scheme or to provide the relevant information to the Applicant.

Reasons for Decision:

The tribunal considers that the landlord did not comply with the requirements of Regulations 3 and 42 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

This was admitted.

The deposit was not paid over to an approved scheme within 30 working days of the commencement of the tenancy agreement and the information stated in Regulation 42 (2) of the Regulations was not provided by the Respondents to the Applicant. The Respondent sought legal advice when the application was intimated to her and admits that she has failed to comply with the landlord's obligations set out in the Regulations. She had not provided the correct tenancy documentation and had not obtained the necessary knowledge to fulfil her obligations as a landlord. She was a registered landlord.

Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 is a regulatory sanction to punish the landlord for non-compliance with the rules. The non-compliance with the Regulations is not disputed by the landlord.

Ultimately the Regulations were put in place to ensure compliance with the Scheme and the benefits of dispute resolution in cases of disputed deposit cases, which the Schemes provide.

Whilst the Tribunal notes the request in the written submissions of the Applicant for payment of the maximum of three times the deposit amount, the Tribunal does not agree that the case warrants the maximum remedy.

Equally, the UT case referred to by Mr Park relates to the following matter: "the error of law specified is that the Tribunal erred in finding the landlord to be an "amateur" and therefore found a lower standard was expected of some landlords" and the UT concludes at paragraph 7 " It does not appear to me to be an error in law to differentiate between landlords who have numerous properties and run a business of letting properties as such, and a landlord who has one property which they own and let out. It would inappropriate in my view to impose similar penalties on two such landlords. Further, a number of factors appear to have been taken account of, and the First-tier Tribunal appeared to me to have taken account of valid matters in assessing the penalty imposed, and although they have not specified the weight they have given to each of the factors mentioned, they are not required to do so."

Paragraph 6 of the decision further states:" The First-tier Tribunal is given a discretion as to the appropriate amount which it must order the landlord to pay the tenant. The words "not exceeding three times the amount of the tenancy deposit" are used which means that in this case the absolute maximum that the First -tier

Tribunal could have ordered to be paid was set, but in my view no minimum was set”.

The sum of £50 awarded is not further commented on.

I consider that the UT in that case confirmed that the issue of whether the landlord is experienced and a commercial landlord or an amateur landlord with only one property is a valid consideration in determining the appropriate amount in each case. However, I do not consider that the UT specifically limited the amount to be ordered in such a case as £50.

On the other hand, I note that the circumstances in the case quoted by the Applicant in which an amount of two times the deposit was awarded were somewhat different from the case. However, the argument the Applicant took from that case, namely that “renting out property is by its very nature a professional arrangement and should not be entered into casually” is also a valid consideration.

The Tribunal considers that in terms of the Regulation the First –tier Tribunal has discretion as to the award it makes but that the discretion of the Tribunal requires to be exercised appropriately. This was set out in the case *Jenson v Fappiano* (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015 as: “ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case.”

The Tribunal took into account the length of time the deposit was unprotected, which was over the entire period of the tenancy and thus well over a year, and the fact that the landlord had kept the funds in an account in her own name and had failed to comply with the information duties as well as the lodging duties for the deposit. Although in this case there was in fact no problem with the repayment of the deposit, had this been different and had a dispute arisen between the parties regarding repayment of the deposit, the Applicant would have been deprived of the dispute resolution mechanism provided through the registered schemes and this was a real risk during the entire time the tenancy was in place. On the other hand the Tribunal also took into account that the landlord is a not professional landlord, that she had kept the funds separate from her own, that she had repaid the full amount quickly after the end of the tenancy and that she had admitted her mistake fully. The Tribunal accepts that the non compliance was not a deliberate attempt to deprive the Applicant of the protection of the registered scheme but rather the Respondent's failure to adequately prepare for the activity of being a landlord and to take appropriate advice or guidance prior to entering into the activity as a landlord, which was also apparent from the failure to comply with the Regulations and the type of lease document sent to the Applicant as this was not in the correct format.

The Regulations can only afford the intended protection for tenants and incentive for landlords to comply with the Regulations if landlords are sufficiently well informed to be able to identify the obligations the Regulations impose.

Ultimately the Tribunal considers that this case is to be placed neither at the very low end of the amount the Tribunal can award, nor at the top end.

In all the circumstances the tribunal considered it fair, proportionate and just to make an order for the sum of £500, which constitutes a meaningful sanction for non-compliance of the Regulations.

Decision:

The First-tier Tribunal for Scotland (Housing and Property Chamber) grants an order against the Respondent for payment to the Applicant of the sum of £500 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.

P.Hennig-McFatrige

Legal Member/Chair

Date

29.4.19