

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 Section 9 of The Tenancy Deposit
Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/19/3531

Re: Property at 6, 1F1 Horne Terrace, Edinburgh EH11 1JJ (“the Property”)

**Parties: Miss Veronica Garcia Torres. Calle Attana, Petre Alicante, Spain (the
Applicant)
 (“the Applicant”)**

**Mrs Karen Winning, 11 West Saville Gardens, Edinburgh, EH9 3 AB (the
Respondent)
 (“the Respondent”)**

Tribunal Members:

Jan Todd (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Respondent did not comply with the duty in
Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011
to pay the deposit to the scheme administrator of an approved scheme and
ordered the Respondent to pay the Applicant the sum of one thousand five
hundred pounds (£1500) being two and half times the amount of the tenancy
deposit.**

BACKGROUND

1. This was the second Case Management Discussion to consider an application under Rule 103 for an order under Section 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011. (2011 Regulations).
2. The following was lodged along with the application:-
 - A copy of the Tenancy Agreement dated 15th January 2018
 - A copy of e-mails between the Respondent and Ms Marie Agnes Lecuirot regarding termination of the tenancy
 - A copy bank statement from the Respondent showing the sum of £600 paid as a deposit in December 2017.

3. The first case management discussion had been held on 17th January 2020 by teleconference as the Applicant lives in Spain. The Respondent had indicated she was unable to attend but the CMD went ahead and the legal member issued a note of the discussion confirming that the Regulations make it clear that breach of the Regulations which require all deposits to be placed within one month in a recognised tenancy deposit scheme is a strict liability. That the Tribunal (formerly the Sheriff) "must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit." The legal member goes on to point out that the maximum sum that could be ordered is £1800 and notes the Respondent had acknowledged that the deposit was not lodged at all and that she had "apologised for not securing the deposit in a deposit scheme, stating that it was an oversight on her part."
4. The Applicant in her application is seeking the maximum penalty and notes that the deposit was never registered and it is expressly stated in the lease that it will be registered with Safe Deposits Scotland.

The Discussion

5. Both the Applicant and the Respondent participated in the CMD through conference call. The legal member explained the purpose of the CMD and confirmed that the Tribunal can make any decision after a CMD as it can make after a hearing.
6. The Applicant confirmed that she had paid £600 to the Respondent in respect of the deposit and stated that when she was planning to leave she wrote to asking where the deposit was. She advised this was around the beginning of October.
7. In the papers lodged with the application is an e-mail from the Respondent to Marie Agnes dated 30th September 2019 asking " Please forward me the information related to my deposit scheme so I can log in and enter my bank details for the refund"
8. A reply was sent by Ms Marie Agnes Lecuirot dated 7th October 2019 saying "Your deposit will be forwarded to you as soon as everything is in order.
9. The Applicant confirmed she has now had the deposit or the part agreed returned to her but the papers show this happened in January 2020, more than two months after the tenant left the Property and after the Respondent saw that the utility bills were all paid by the Applicant.
10. The Respondent was then asked for her comments and Mrs Winning advised that the first she knew about the need for the deposit to be lodged in a scheme was when she got the papers from the Tribunal with this application. The Respondent confirmed that she only rents out this flat and had let a friend take care of all the arrangements to do with the let. She did however acknowledge that she has been renting this flat for several years.
11. She confirmed that she had signed the lease and acknowledged that she should have noted that in the lease itself it specifically refers to a deposit of £600 being paid. The Tribunal notes the lease goes on to say that "the landlord must lodge any deposit they receive with a tenancy deposit scheme within 30 days of the start date of the tenancy. A tenancy deposit scheme is an independent third party scheme approved by the Scottish Ministers to hold

and protect a deposit until it is due to be repaid. It goes on to say the scheme administrators would be "Safe Deposits Scotland".

12. The Respondent went on to advise that the amount of deposit was reduced by £300 at the end of the tenancy to reflect rent for 2 weeks that the Applicant owed and had not paid. She submitted therefore that the deposit was reduced to £300 and that should be the sum taken into account. The Tribunal asked the Respondent to confirm what was paid at the start of the tenancy and she advised it was £600. It appears that the £300 was deducted by the Respondent at the end of the tenancy to cover unpaid rent.
13. The Respondent also advised she knew nothing of the deposit regulations or the need to lodge this until this application was raised. She acknowledged she should have read the lease but had not done so and had relied solely on her friend who had managed the property she said for around 10 years and dealt with the tenants.
14. Finally the Respondent confirmed she has now put the current tenant's deposit into a scheme and did so immediately after this was drawn to her attention by this Tribunal application.
15. The Respondent in her written response to the Application states "On receipt of the paid utility bills from Mrs Garcia I have refunded her £300 deposit. On receipt of your initial correspondence I registered with Safe Deposit Scotland and the Horne Terrace Deposit is now lodged with them. Horne Terrace is the only flat I let out and my friend looks after the property and tenants for me. I am not a letting agent and therefore was not aware of the legislation. I had no intention of doing anything illegal and the only reason I did not return Ms Garcia's deposit was that I was waiting proof of payment of utility bills.

FACTS

1. The Respondent entered into a lease with the Applicant whereby the Applicant leased the Property from the Respondent from 15th January 2018
2. The rent due was £600 per month.
3. The deposit paid by the Applicant to the Respondent was £600.
4. The tenancy continued from 15th January 2018 until 28th October 2019 when the Applicant quit having given 4 weeks' notice.
5. The Applicant was not at any time given information about where her deposit had been placed.
6. The Applicant raised an application for payment of an order under Rule 9 of the Regulations on 4th November 2019.
7. The Deposit was not placed in an approved scheme.
8. Part of the deposit has been returned to the Applicant namely on or around 27th January 2020, namely £300. The other £300 has been kept by the Respondent for payment of rent.
9. The Tribunal found that the Respondent has failed to comply with the duty set out in Section 3 of the 2011 Regulations by failing to place the deposit in an approved scheme within 30 days of the beginning of the tenancy.

REASONS

1. The Tribunal found that the Respondent has failed to comply with the duty set out in Section 3 of the 2011 Regulations by failing to place the deposit in an approved scheme within 30 days of the beginning of the tenancy.
2. That in terms of Section 10 of the 2011 Regulations the Tribunal is obliged to make an order that the landlord pay the tenant an amount not exceeding three times the amount of the tenancy deposit.
3. The Tribunal considered that as there was no dispute over the facts and in accordance with the overriding objective to avoid delay, it was appropriate to make an order at the CMD.
4. The Tribunal considered that the Respondent may have overlooked the need to lodge the deposit due to not realising this applied, but noted that a responsible landlord should know that all deposits require to be lodged in an authorised scheme. The Regulations have been in force since 2011 and this is clearly stated in the lease the Landlord herself chose to use. The fact the landlord chose to use a friend as the person to deal with tenants does not mean she can avoid or excuses her legal responsibilities. The friend is acting as her agent in dealings with the Property and the Tenant is entitled to know that her deposit is protected and that at the end of the tenancy if there is any dispute she can avail herself of the independent dispute adjudication service offered by the statutory deposit schemes.
5. The Tribunal noted that the Respondent only returned part of the deposit claiming repayment for sums she claims are due. The purpose of lodging a deposit in an approved scheme is to allow both parties the protection of having any dispute over the return of the deposit adjudicated by the scheme administrators who act in an objective way. The tenant has been deprived of this facility. The Respondent however even after this application had been brought delayed releasing the balance of the deposit by a few months while she sought evidence of payment of utility bills.
6. The Tribunal notes that the tenancy lasted nearly two years and the deposit was not returned until over two years after it was placed. The Respondent is not a "professional" landlord but she has allowed a friend to organise her tenancy and does not appear to have taken her responsibilities seriously in ensuring that in using an agent they are aware of all the obligations a landlord needs to comply with. The tribunal however notes that this although this does not appear to be a deliberate attempt to avoid placing the deposit but more one of ignorance, it is a serious breach where the landlord has taken little responsibility for a substantial period to find out about or attend to her obligations. In addition the failure while rectified for the latest tenant was not immediately mitigated for the Applicant by placing the Applicant's deposit into a scheme after the Respondent knew of her responsibilities. Weighing up all these factors the Tribunal considers the amount of two and a half times the deposit as reasonable and appropriate.

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.

Mrs Jan Todd

Legal Member/Chair

05/03/2020

Date