



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 and Regulations 3 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/19/3754

Re: Property at 12 Blackshaw Drive, West Kilbride, KA23 9BW (“the Property”)

Parties:

Ms Romy King, 7 Barlosh Court, Ochiltree, KA18 2QS (“the Applicant”)

Mrs Lotta Brown, Yonderfield Farm, West Kilbride, KA23 9PY (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £50.

Background

By application, dated 10 November 2019, the Applicant sought an Order for Payment in respect of the failure of the Respondent to lodge her tenancy deposit in an approved tenancy deposit scheme.

The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties, commencing on 14 September 2019 at a monthly rent of £700 and with a deposit also of £700 and an undated Receipt for the deposit. The Applicant also provided the Tribunal with emails from LPS Scotland (7 November 2019) and SafeDeposits Scotland (6 November 2019) confirming that they did not hold the deposit.

In the application, the Applicant stated that she had signed the tenancy agreement on 14 September 2019, hoping to live in the Property for years to come. There had, however, been issues with the boiler and the Applicant had given one month’s notice to the Respondent on 8 October 2019. The Respondent had told her that she owed a

further £525 in rent up to and including the termination date of 5 November 2019. On 4 November 2019, the parties had met at the Property. The Applicant had asked when the deposit would be returned and the Respondent had said this would happen once the Applicant had paid a yet to be generated gas bill for the period of the tenancy. The Applicant narrated further issues between the Parties but acknowledged that the Tribunal's remit extended only to the failure to lodge the deposit in an approved tenancy deposit scheme.

On 3 December 2019, the Applicant forwarded to the Tribunal an email from MyDeposits Scotland dated 1 December 2019, in which they confirmed that the deposit had not been lodged with them.

On 20 December 2019, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 10 January 2020.

On 7 January 2020, the Respondent submitted written representations to the Tribunal. She confirmed the details of the tenancy and the fact that the Applicant had given notice on 8 October 2019. She stated that the deposit was due to be lodged with the deposit scheme on 13 October 2019. It had been agreed by email that the Applicant would return the keys on that date and the Respondent would return her deposit, but the Applicant had not returned the keys on 13 October. On 14 October 2019, the Respondent confirmed to the Applicant that she had received the rent for the period of notice. The Applicant had then told her she would be moving out during the following week and the Respondent had not lodged the deposit with the deposit scheme as she had agreed to hand it back directly to the Applicant. In the event, the Applicant did not return the keys of the Property until 4 November 2019 and, after confirming with the gas suppliers that they would bill the Applicant directly, she had contacted the Applicant on 6 November 2019 to let her know that she had returned the deposit in full to the Applicant's account.

The Respondent provided further information regarding the issue with the heating in the Property, but this was not relevant to the matter under consideration by the Tribunal so is not summarised here.

The Respondent stated that she believed she had acted in good faith and with the best interests of the Applicant at heart. She included with her representations a copy of an email of 6 November advising the Applicant that the deposit had been returned to her account.

On 20 January 2020, the Applicant responded to the Respondent's written representations. She stated that the deposit had been unprotected for 58 days, from the date of its being paid on 9 September 2019 until 6 November 2019. She had originally agreed to return the keys on 13 October 2019 and understood this to mean that by exiting prior to the end of the first rental month, she would not incur further rent, but she had then received an email from the Respondent saying that a further £525 was payable on 14 October 2019, taking her contract to 5 November 2019. The Applicant stated that it would not have been prudent to return the keys three weeks before the end of the tenancy. The Applicant's daughter, Clementine King, also emailed the Tribunal on 19 January 2020, confirming that she had been present when her mother had handed back the keys on 4 November 2019, and when the Respondent had told the Applicant that the deposit would be returned after the utilities bill had been paid. This, she said, contradicted the statement by the Respondent that she would have refunded the deposit three weeks earlier, had the Applicant returned the keys on 13 October.

Case Management Discussion

A Case Management Discussion was held at Greenock Sheriff Court on the afternoon of 22 January 2020. The parties were both present. The Tribunal Member told the parties that he understood that there had been issues between the Parties in relation to the central heating system and the manner in which the utilities company had been provided with the information necessary to enable them to bill the Applicant directly, but he reminded the Parties that the sole issue for consideration was the failure of the Respondent to lodge the deposit with an approved tenancy deposit scheme.

The Applicant said that she had suffered considerable stress and worry after the Respondent told her that she would get the deposit back when the gas bill was paid. The Respondent repeated that she had believed the Applicant would be returning the keys on 13 October and when that did not happen, that they would be returned around 24-26 October. The Applicant said that, when the Respondent told her that she would be liable to pay rent until 5 November, she had been reluctant to move out earlier, as she believed she would have been responsible for the Property until 5 November, but would have no access to it. The Respondent told the Tribunal that the Applicant's email saying she would be moving out on 13 October was sent after not before she (the Respondent) had emailed the Applicant to say she would be liable for rent until 5 November.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Regulation 3(1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") states that a landlord must, within 30 working days of the beginning of the tenancy, pay the deposit to the scheme administrator of an approved scheme and provide the tenant with certain information required under Regulation 42 of the 2011 Regulations. Regulation 19 states that, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal must order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit.

The Tribunal noted that the Respondent accepted that she had not paid the deposit to an approved scheme. The tenancy had commenced on 14 September 2019 and she had understood that she had until 13 October to lodge the deposit. She had not done so because the Applicant had by then given notice and she had understood the Applicant would be moving out on 13 October. The Tribunal noted the comments by the Applicant as to why she had not moved out on 13 October. She was entitled to stay until the end of the period of notice without having to justify her decision to do so. The Applicant had in fact returned the keys on 4 November and the Respondent had refunded the deposit in full two days later.

The obligation on the Respondent was to lodge the deposit within 30 **working** days of the commencement of the tenancy. The tenancy began on 14 September. The 30th working day after that was 25 October 2019. There was no obligation on the Respondent to lodge the deposit prior to that date. Accordingly, the Tribunal made a finding of fact that the deposit was unprotected for a period of 12 days, from 25 October to 6 November inclusive.

The Tribunal noted that the Respondent returned the deposit in full two days after the Applicant returned the keys. There was a dispute between the Parties about the Respondent's conduct over that period and whether she had given contact details for the Applicant to the utilities company, but that is not a matter for consideration by the Tribunal.

The Tribunal noted that the Applicant had given notice very shortly after moving in to the Property. In terms of the Private Housing (Tenancies) (Scotland) Act 2016 and in terms of the tenancy agreement between them, the Applicant was entitled to give 28 days' notice, but she would remain liable to pay rent during that period.

Regulation 10 of the 2011 Regulations provides that the Tribunal **must** make an Order for Payment where a landlord has failed to comply with the obligation to lodge a deposit in an approved scheme within 30 working days of the commencement of the tenancy. The view of the Tribunal was that, whilst the Respondent had failed in that duty and this had caused understandable anxiety to the Applicant, the failure was not serious, as the Respondent had received notice from the Applicant on 8 October and more than half of the required period of notice had passed before the final date on which the Respondent should have lodged the deposit. That did not excuse the failure, but it supported the Tribunal's conclusion that the failure was at the lower end of the spectrum. The deposit had been at risk for a short period of 12 days and had been refunded two days after the tenancy came to an end.

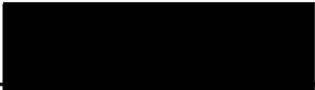
The Tribunal considered very carefully all the facts and circumstances of the case and determined that a fair, just and proportionate payment to the Applicant was £50

Decision

The Tribunal determined that the application should be decided without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £50.

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.



Legal Member/Chair

22 January 2020

Date