

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 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/PR/19/3882

Re: Property at Flat 126, 95 Morrison Street, Glasgow, G5 8BE (“the Property”)

Parties:

Mr Matthew Paul Newsome, Flat 3/1, 75 Clincart Road, Glasgow, G42 9DU (“the Applicant”)

Ms Natasha Silver, 45 Cragneithan Road, Glasgow, G46 6SJ (“the Respondent”) per her agent, Ms. Collette Kerr of Oraclelaw Limited, 1A, Helena House, Busby Road, Clarkston, Glasgow, G76 7RA (“the Respondent’s Agent”)

Tribunal Members:

Karen Moore (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Payment in the sum of ONE THOUSAND NINE HUNDRED AND FIFTY POUNDS (£1,950.00) be granted.

1. By application dated 4 December 2019 (“the Application”) the Applicant applied for an order in terms of Regulation 9 of the Regulations and Rule 103 of the Rules. A legal member of the Tribunal with delegated powers to do so, accepted the Application in terms of Rule 9 of the Rules and a Case Management Discussion (“CMD”) was fixed for 6 February 2020 at the Glasgow Tribunal Centre, 20 York Street, Glasgow, G2 8GT. The CMD was intimated to the Parties.
2. Prior to the CMD, the Applicant submitted email correspondence between him and the Respondent relating to the tenancy deposit and a letter from the Applicant’s Agent offering to settle the matter. The Respondent submitted evidence of deposit of the tenancy deposit with SafeDeposits Scotland.

CMD

3. The CMD took place on 6 February 2020 at the said Glasgow Tribunal Centre. The Applicant was present and was not represented. The Respondent was not present and was represented by the Respondent's Agent.
4. The Tribunal explained the purpose and procedures of the Tribunal and the CMD to the Parties and confirmed with the Respondent's Agent that the Respondent accepted the breach of the Regulations. The Parties agreed that the tenancy deposit had been paid on 3 October 2019 but not lodged until 4 December 2019, 15 days outwith the statutory time limit. The Tribunal advised the Parties that, in that case, in terms of Regulation 10 of the Regulations, the Tribunal must make an order of compensation.
5. The Respondent's Agent in mitigation on behalf of the Respondent submitted to the Tribunal that the Respondent had been naïve in her approach to the tenancy and had not appreciated the seriousness of non-compliance with the Regulations. Respondent's Agent, fairly, conceded that the tone and content of the emails from the respondent to the Applicant were unfortunate and did not reflect her true intention to lodge the tenancy deposit with a tenancy deposit scheme and this underlined the Respondent's naivety. The Respondent's Agent assured the Tribunal that the Respondent now fully understood the seriousness of non-compliance with the Regulations and apologies to the Tribunal and the Applicant. She explained that the Respondent works abroad in Dubai and has had difficulties with her bank, Santander, in transferring funds remotely. The Respondent's Agent pointed out that the tenancy deposit had been lodged with a tenancy deposit scheme on her return to the United Kingdom at the beginning of December 2019 and been repaid to the Applicant at the termination of the tenancy.
6. The Applicant advised the Tribunal that the matter had caused him upset in respect of the comments made to him by the Respondent in the emails and that, in his view, the content of the emails belied any intention of the Respondent to lodge the tenancy deposit with a tenancy deposit scheme and that, in his view, the Respondent did not intend to do this until faced with the prospect of tribunal action being taken by him. He submitted that this was his first experience of a tenancy in Scotland and that it had been a bad one. He advised the Tribunal that he found it unlikely that there were banking issues which could not be overcome.
7. The Tribunal noted that the Respondent had made an offer to the Applicant to settle the matter on payment of £650.00 which offer had been rejected by the Applicant. The Tribunal explained to the Parties that the effect of an order had serious consequences for a landlord in terms of landlord registration. The Tribunal asked if the Parties if they wished an opportunity to revisit the offer. However, the Applicant was not agreeable to this proposal and, as his right, preferred to leave the question of compensation to the Tribunal.

Findings in Fact

8. From the Application, the documentation lodged with the Tribunal and the CMD, the Tribunal found that tenancy deposit of £1,300.00 had been paid by the Applicant to the Respondent's letting agents on 3 October 2019 but not lodged by the Respondent until 4 December 2019, 15 days outwith the statutory time limit and in breach of Regulations 3 of the Regulations.
9. From the email correspondence between the Applicant and the Respondent, the Tribunal found that Applicant had been very concerned at the whereabouts of the tenancy deposit and that the responses from the Respondent did nothing to allay his concerns.
10. From the Respondent's Agent's thorough and professional submission on behalf of the Respondent, the Tribunal accepted there may have been an element of naivety on the part of the Respondent. The Tribunal took the view that this naivety was in respect of the consequences of non-compliance with the Regulations for her as a landlord and she had no appreciation of the purpose of the Regulations nor of the stress and level of concern under which she had placed and was placing the Applicant.
11. The Tribunal did not accept that there had been banking difficulties which could not be overcome and took the view that the Respondent could have and should have taken positive action to reassure the Applicant that the tenancy deposit which she held was not in jeopardy.

Decision

12. Having found that the Respondent had been in breach of Regulation 3 of the Regulations, the Tribunal had regard to, firstly, Regulation 10 of the Regulations which states that an order must be granted and, secondly, Rule 17 of the Rules which allows that the Tribunal may do anything at a CMD which it may do at a hearing, including making a decision, the Tribunal made an Order for Payment of £1,950.00.

Reasons for Decision

13. In reaching a decision in respect of the amount of compensation, the Tribunal had regard to all of the information before it: the Application, the documentation lodged with the Tribunal and submissions at the CMD, whether specifically referred to herein or not.
14. The Tribunal had regard to the purpose of the Regulations and to the punitive and penalty element of Regulation 10 of the Regulations. The Tribunal noted that the compensation level which it could impose is three times the amount of the deposit.
15. The Tribunal noted that the Applicant had first queried where the tenancy deposit was lodged within days of paying it and so the Respondent, having been alerted to her obligation to lodge the tenancy deposit, could have complied with the statutory time limit. The Applicant enquired again during the statutory time limit and again the Respondent, had opportunity to comply or to

provide the Applicant with sufficient assurance that his tenancy deposit was secure but chose not to do so.

16. The Tribunal took into account the mitigation on behalf of the Respondent, and, in all the circumstances, took the view that a midway point in the scale of the compensation factor reflects fairly both the Respondent's position and the Applicant's position. Accordingly, the Tribunal determined that 1.5 times the tenancy deposit is appropriate compensation. As the tenancy deposit is £1,300.00, the amount of the order is £1,950.00.

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.

Karen Moore

Legal Member/Chair

6 February 2020

Date