Housing and Property Chamber
First-tier Tribunal for Scotland

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/18/2374

Re: Property at 4/5 Cornock Street, Clydebank, West Dunbartonshire, G81 3BP ("the Property")

Parties:

Mr Conor Ferguson, Ms Ashleigh Brady, 6 Hunter Avenue, Ardrossan, North Ayrshire, KA22 8BB; 6 Hunter Avenue, Ardrossan, North Ayrshire, KA22 8BB ("the Applicant")

Mrs Anna Blair, 10 Braid Drive, Cardross, G82 5QD ("the Respondent")

Tribunal Members:

Melanie Barbour (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that

Background

An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the 2017 Rules") seeking an order for payment of the tenancy deposit in relation to an assured tenancy for the Property.

The application contained a copy of the Tenancy Agreement and a copy of a letter from the Letting Agents confirming final inspection on 30 July 2018.

The Applicant advised that the Respondent had failed to submit the deposit of £450 to an approved scheme.

The Applicant attended the case management discussion. There was no appearance from the respondent herself, however Mr Sheridan and Ms Stewart from Clydebank Estate and Letting Agents Ltd, the respondent's representative attended on her behalf.

The Hearing

The Applicant advised that they had moved into the property in May 2015, they had entered into a short assured tenancy for the property and paid the deposit in terms of the lease. During the course of the tenancy they advised that there had been no issues with the tenancy. The main contacts during the tenancy were either the letting agents or the landlord's husband, Mr Blair.

When she moved out they had tried to get the deposit returned. Mr Blair however had sent text messages to them saying that there was some damage to the property and he intended to withhold part of the deposit. They advised that they found his texts to be threatening, he asked them to make an offer to resolve the issue, they could not agree on an amount, and Mr Blair threatened to proceed to a small claims action at court. Mr Blair had sought £200 to remove the stickers from one wall of a bedroom, the applicant did not consider that this is a fair and reasonable amount to have to pay, she had offered to buy the paint and carry out some of the labour, however this had not been agreed by Mr Blair.

The applicant advised at this time they investigated the legal situation about deposits, and discovered it should have been paid into a deposit scheme.

The applicant advised that they then contacted the letting agents, and asked that any further contact be through the letting agents given that they found Mr Blair to be threatening. However they continued to get further texts from the landlord's husband Mr Blair.

The applicant advised that when they contacted the letting agents they had agreed to repay the deposit to them, however given the texts which had received from Mr Blair, they preferred to proceed through more a more formal legal process and they submitted the application to the tribunal.

Mr Sheridan for the respondent advised that they, the letting agents, had initially offered to repay the deposit, however it was not accepted by the applicant. He advised that he had taken over the letting agency in October 2016 first, as a director, and later he had started managing the company, when a former employee left the company.

Mr Sheridan advised that the letting agency has over 200 hundred properties which they manage. He has been undertaking an audit of all the properties and checking to ensure that deposits have been paid into deposit schemes. He advised that this is the only lease with a deposit which had not been paid into a scheme. He accepted that the non-payment of this deposit into a scheme had been an error on the part of the letting agents.

He advised that non-payment of the deposit had happened before he had been involved in the company, however he accepted it was a mistake and he did not deny this.

He advised that the deposit had not been sitting in a client account, and therefore it was not apparent that there was a deposit which had not been into a scheme He advised that initially when he became involved in the firm he had not managed the money aspects of the firm and it was only when a former employee left the company about 4 months ago.

He was unhappy about the second part of the order sought by the applicants, that that the letting agents were to ensure compliance with their obligations, he advised that the applicant's had been investigating his business.

The applicants advised that they were no longer seeking an order in terms of the second part of the order sought and just wished to ensure that proper procedures were in place and were happy to know that the letting agents was the case. They were seeking an payment order for the first part sought.

Mr Sheridan advised that the landlord did not turn up to the final inspection and this can often lead to difficulties, after a tenant has left, if the landlord does not agree with the condition of the property there can be problems over deposits.

He advised that he has invoices from the landlord for additional damages they claim from the applicants. He submitted the invoice which I accepted as additional document in this case.

The applicant advised that the deposit should have been put into a deposit scheme and she had discovered that the letting agency company had been dissolved during the course of her tenancy and her money should have been safely held in a scheme and it had not been.

The applicant confirmed that they had expected to have the deposit returned as at the final inspection report they had been advised by the letting agents that they did not see any issue with the deposit being returned.

Between the 30 July and 6 August there had been texts between the applicants and Mr Blair over the deposit.

Mr Sheridan advised that on around 6 August 2018, they as the letting agents had offered to repay the deposit when they had been contacted by the applicant, they advised that they had also offered to pay Mr Blair some of the costs towards the redecoration which he was claiming, namely £100. Mr Sheridan had hoped that this would be an end of the matter for everyone, however while Mr Blair would accept the offer, the applicant had decided to proceed to the tribunal.

Mr Sheridan said that while the application was against the landlord the "buck" stops with him as the letting agent.

Mr Sheridan advised that the landlord had a number of properties with the letting agent and he understood that Mr Blair and the landlord had been landlords for a number of years.

There was discussion about the email messages. I considered making a direction and sending the matter to a hearing, in order to assess the evidential value of the messages. However the respondent lodged an email with copies of the texts between the parties. The applicant advised that there had been further earlier texts between the applicants and Mr Blair.

Parties both advised that they wanted matters dealt with today and did not wish for there to be further procedure to deal with the matter.

Having regarded to the request by both parties to proceed to determine the case today, the matters which were not in dispute, my power under rule 18 to determine the proceedings without a hearing and the overriding objective of these proceedings as set out in rule 2, I decided to determine the matter today and not seek further evidence.

Findings in Fact

On the information before the Tribunal I found the following facts to be established:

A tenancy agreement was entered into between the applicants and the respondent for the property and existed between the parties. It was entered into on 20 May 2015.

The Tenancy ended on around 30 July 2018.

The application to the tribunal had been made on 5 September 2018.

There is a clause in the lease agreement entitled "Deposit" which confirms that one month's rent of £450 is payable as a deposit. The agreement also states that the landlord shall pay the deposit into a scheme within 30 days and provide statutory information to the tenant, there is also provision detailing what can be deducted from the deposit and how the deposit can be recovered at the end of the tenancy.

That the deposit had been paid by the applicants to the respondent's letting agents.

That the deposit had not been paid into an approved scheme.

The respondent had not repaid the deposit belonging to the applicant. They had also still not paid it into a scheme.

That there had been a number of texts between the applicants and the respondent's husband after the tenancy ended in relation to the repayment of the deposit and about alleged damage to the property, and deduction from the deposit.

That the landlord and her husband Mr Blair had a number of other properties which they rented out.

That landlord and her husband Mr Blair had been renting out properties for a number of years.

That the letting agency had not paid the deposit into the tenancy deposit scheme when they had received it.

That the letting agncy were letting agents for the landlord, and managed landlord and her husband Mr Blair's properties.

Reasons for Decision

The Tenancy Deposit Schemes (Scotland) Regulations 2011 imposes a number of legal requirements in relation to the holding of deposits by landlords for tenants, and relevant to this case are the following regulations:-

Duties in relation to tenancy deposits

3.—(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.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A "relevant tenancy" for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement— (a) in respect of which the landlord is a relevant person; and (b) by virtue of which a house is occupied by an unconnected person, unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions "relevant person" and "unconnected person" have the meanings conferred by section 83(8) of the 2004 Act.

Court orders

9.—(1) A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—

(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 sheriff 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.

The Respondents agents appeared today for the respondent. They admitted that the deposit was not paid not a scheme and they sought to accept responsibility for this matter. The regulations however make it the duty of the landlord to comply with the payment of the deposit into an approved scheme.

The regulations provide that where a landlord has not complied with the regulations, then I must order a penalty not exceeding three times the amount of the deposit.

Having regard to the case law, decisions on this matter should be fair, proportionate and reasonable.

I have taken into account that the lease existed for over three years and during this time the deposit was never secured in a scheme. While the letting agents wish to responsibility for this omission, I cannot disregard that at the end of the tenancy it was the landlord's husband who entered into texting correspondence with the applicants about the deposit. The applicants stated that they felt threatened and having failed to have the deposit put into a tenancy deposit, the applicant had no fair and impartial legal process in which to try and recover their deposit.

I think that it is relevant in determining this matter, to bear in mind that even if it was the original omission of the letting agents in not paying the deposit into the scheme, given that the landlord was not happy to repay the deposit, as an experienced landlord they should have sought redress through the deposit scheme's adjudication process. They should have contacted the letting agents to find out which scheme the deposit was in, and allowed the scheme adjudicator to decide what if any deductions should be made to the deposit. This did not happen and the applicant was denied the legal protections, which they were rightly entitled to in law. I consider that the applicant was prejudiced by the failure to pay the deposit into a scheme.

I consider that as the landlord is registered, has a number of other properties, and has rented out properties for a number of years, then she would (or at least should) have been well aware of the requirements to ensure that the money was in a deposit scheme.

The lease agreement also clearly sets out that the landlord will put the money into a deposit scheme.

I consider that there was therefore a blatant disregard for the regulations in this case.

While I consider the responsibility lies with the landlord this case, I have taken into account the fact that the letting agent stated that they took responsibility for the non-payment of the deposit into the scheme, this offers some mitigation to the landlord,

but does not fully address the responsibility of the landlord in this case for the reasons set out above.

I also note that the letting agents on being made aware of the matter in August 2018, attempted to resolve matters by repaying the deposit and offering to pay part of the claim for damages sought by the landlord.

Taking all of the matters into account I consider that a penalty of 2 times the deposit should be awarded in this case.

I have also had regard to the claim which the letting agents advise that the landlord may seek against the applicant in relation to the condition of the property and it does appear that the damages question has not been resolved. While I note the invoice lodged totals £895 which is more than the total value of the deposit, given the terms of the lease I consider that consideration of the damages claim should be dealt with by adjudication through one of the tenancy deposit schemes and I will therefore also make an order under regulation 10 (b) (i) and order the landlord to— (i) pay the tenancy deposit to an approved scheme.

On the basis of the evidence submitted, I consider that I should make an order the landlord to pay the tenant £900.00; and the landlord pay the tenancy deposit of £450 to an approved scheme.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Melanie Barbour

6.12.18

Legal Member/Chair **Date**