

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 16 of the Housing (Scotland) Act 2014 and Sections 120-122 of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/PR/18/2441

Re: Property at Flat 1/2, 34 Calder Street, Glasgow, G42 7RU (“the Property”)

Parties:

Miss Elaine Jappy, 130 Monifieth Avenue, Cardonald, Glasgow, G52 3DJ (“the Applicant”)

Mr Francis Pettigrew, 48 Glenbervie Wynd, Irvine, KA11 4DL (“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 to decide the application without a hearing and to grant the application and made an Order for Payment by the Respondent to the Applicant of the sum of One Thousand Five Hundred and Thirty Pounds.

Background

By application received on 10 September 2018, the Applicant sought an Order for Payment against the Respondent. The application was accompanied by a copy Lease document commencing on 2 November 2012 at a rent of £410 per month. The Lease provided for a deposit of £510 “to be protected by a government approved Tenancy Deposit Scheme”.

The application was also accompanied by copies of e-mails between the Applicant and the Respondent’s agents, Northwood Lettings, dated 13, 15 and 17 August 2018, agreeing that the Applicant would move out on 14 September 2018, by a copy e-mail from The Letting Protection Scheme Scotland (“LPS”) dated 14 August 2018, confirming that the Respondent’s agents had successfully submitted a deposit to LPS and a print of the “View deposit” page of the LPS website, stating that a repayment request could not be submitted for the deposit until 10 September 2018 because a payment had recently been made to LPS. The Applicant contended that

the deposit she had paid on 2 October 2012 had not been lodged with an approved tenancy deposit scheme until 14 August 2018, the day after she had intimated to the Respondent's agents her intention to vacate the property.

A Case Management Discussion was set for 15 November 2018, but sheriff officers were unable to serve the notification and papers on the Respondent, as Northwood Lettings advised that they were no longer acting for the Respondent and would not accept service on his behalf.

On 22 November 2018, the Tribunal notified the parties of the date, time and venue of a Case Management Discussion and the Respondent was invited to make written representations no later than 7 December 2018. Service was effected on the Respondent by sheriff officers at his home address on 23 November 2018. No written representations were received by the Tribunal.

Case Management Discussion

A Case Management Discussion was held at Glasgow Tribunals Centre, 20 York Street, Glasgow on the afternoon of 17 December 2018. The Applicant was present. The Respondent was not present or represented at the Case Management Discussion, having advised the Tribunal earlier in the day that he was unable to take time off work to attend. He asked in that telephone call if the Tribunal had received the written representations he had sent by e-mail on 28 November 2018 and, on being told they had not arrived, he re-sent them. The Applicant was given an opportunity to read the representations before the Case Management Discussion started.

The Applicant told the Tribunal that she had paid the deposit to the Respondent's agents, Northwood Lettings and on 2 November 2012, she had been given a copy of the signed Lease, together with a document headed "Information Relating to Tenancy Deposit", which she produced to the Tribunal. It stated that the deposit had been received by the landlord on 2 November 2012 and that it would be lodged with LPS Scotland on 2 December 2012. The Applicant had not thought it necessary to ask any further questions of the Respondent's agents, as the document appeared to be quite clear. She confirmed to the Tribunal that she had received the agreed balance of her deposit from the Respondent's agents on 27 September 2018. Her concern was that her money had been at risk for 5 years and 10 months and that it was only when she intimated her intention to vacate the Property that the Respondent's agents had lodged the deposit with LPS.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations states 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 and that it would make a decision without a hearing.

Regulation 3(1) of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations") provides 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 required information. Under Regulation 10, if satisfied that the landlord did not comply with any duty under 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 considered all the evidence before it.

The Tribunal was satisfied from the documentation provided with the application, that the deposit had not been lodged with an approved tenancy deposit scheme within 30 days of the beginning of the tenancy. The "Information Relating to Tenancy Deposit" document provided to the Tribunal anticipated that the deposit would be lodged with LPS on 2 December 2012, but this information sheet had been given to the Applicant one month earlier, on 2 November 2012. The "View Deposit" section of the LPS website was dated 14 August 2018 and stated that a payment had "recently" been made to them. The Tribunal held that this payment must have been the Applicant's deposit and that it had only been lodged on 13 or 14 August 2018.

The Respondent, in his written representations, had contended that the fault, if any, lay entirely with his agents, Northwood Lettings, as he had had no dealings with the Applicant and had never received any money directly from her. He pointed out that it was Northwood's staff who had signed the Lease on his behalf and had witnessed the Applicant's signature.

The Tribunal did not doubt that the Applicant had, throughout the tenancy, dealt with the Respondent's agents rather than with him, but was clear that the obligation to comply with the 2011 Regulations lies with landlords, so the Applicant's recourse had to be against the Respondent personally. The Tribunal accepted that the Respondent might have grounds for seeking recompense from his agents, but that was not relevant to the present Decision.

The view of the Tribunal was that the Applicant's deposit of £510 had been at risk throughout the period of almost 6 years that she had been a tenant of the Property. Accordingly, the failure was significant and of lengthy duration and the payment to be made by the Respondent to the Applicant must reflect the seriousness of the failure.

Decision

The Tribunal determined to decide the application without a hearing, to grant the application and to make an Order requiring the Respondent to pay to the Applicant the sum of One Thousand Five Hundred and Thirty Pounds.

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.

G Clark

Legal Member/Chair

17 December 2018

Date