

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 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/19/3866

Re: Property at 3 Belmont Road, Flat A, Aberdeen, AB25 3SR ("the Property")

Parties:

Ms Salome Akwukwuma, 13 Powis Crescent, Flat C, Aberdeen, AB24 3YS ("the Applicant")

Ms Gail Davidson, 5 Binghill Crescent, Aberdeen, AB13 0HU ("the Respondent")

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment of the sum of £450 in terms of Regulation 10 (a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011(the Regulations) should be made.

BACKGROUND:

1. On 2 December 2019 the Applicant applied under Rule 103 of the First tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure (the Rules) for payment under Regulation 10 (a) of the Regulations.
2. The Applicant submitted to the Tribunal tenancy agreement for the tenancy commencing on 4 July 2019, email message dated 19 September 2019 terminating the tenancy to 17 October 2019, screenshot of the receipt of £155 from the Respondent on 18 October 2019, email messages agreeing the sum to be deducted from the deposit dated 14 and 15 October 2019, screenshot of a text exchange between the parties on 26 June 2019 confirming payment of the deposit of £300 to the Respondent.

3. The Respondent lodged written representations on 26 January 2020 together with copies of an email exchange between the parties dated 14 and 15 October 2019 regarding the return of the outstanding sum of £155.
4. A Case Management Discussion (CMD) was fixed for 6 February 2020 and the Applicant attended in person. The Respondent had requested participation by conference call.
5. The CMD was scheduled for 2 pm and a further application under Rule 103 involving the same property and landlord but by a different Applicant had been scheduled for the same time. The Applicants in both cases and the Respondent agreed that the CMDs for both cases could be heard together in terms of Rule 12 of the Rules.
6. Both parties had been advised in the notification for the Case Management Discussion that the Tribunal may make a decision at that stage. The legal member explained the provisions under rules 17 and 18 of the Rules and both parties were aware that a decision could be made at the CMD.

The Case Management Discussion:

7. The Applicant advised that she had initially asked if her deposit would be lodged with a scheme and been advised this would happen. She found out at the beginning of October 2019 with a telephone call to SafeDeposits Scotland that the deposit had not been registered by the scheme. The deposit was repaid to her, under deduction of £145 as agreed with the Respondent, just after the end of the tenancy. She asked for the maximum amount under the Regulations as the whole tenancy the deposit was not protected and the landlord must have known that as it was in the contract and thus it was also a breach of the contract not to lodge the deposit.
8. The Respondent referred to her statement and agreed that she had not lodged the deposit in accordance with the Regulations. She was aware of the Regulations and had dealt with two different schemes in the past. She thought she had 3 months to lodge the deposit. The tenancy came to an end through the tenant giving notice in mid-September for 17 October 2019. This was a short tenancy and she stated she had kept the flat for the Applicant despite other tenants making enquiries. She had taken the deposit and put it in an account used for property matters, not her own day to day account. The tenancy was of a short duration and she had immediately returned the deposit less the agreed sum of £145 to the Applicant as shown in the emails of 14 and 15 October 2019. The tenant had stopped paying rent in the last month, which is what led to the deduction and this was also a breach of the contract.
9. By way of explanation she added that usually in the past she would have a joint tenant and only one lease. She had only started issuing individual leases in that year and was hoping once all three tenants would be in the property there would be a joint lease and she was planning to lodge the deposit then. The tenancy then came to an end just after the third student moved in. She had planned to lodge the deposit at that stage but only a month was left and so she did not

hand the deposit to the scheme. She stated this was an error on her part and she had absolutely no intention to deprive the tenants of the deposit. In fact, she paid the deposit back within a day of the Applicant moving out and this was quicker than it would have been had they used the deposit scheme. She apologised for any inconvenience but also stated she did not think her mistake led to any stress for the Applicant as she paid back the outstanding agreed amount immediately after the Applicant moved out. She confirmed she had more than one property and had been letting out the property in question for more than 10 years. She stated she had learned a lot from this process and would not make this mistake again.

The legal test:

10. In terms of Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (the Regulations) an application under that Regulation must be made within 3 months of the end of the tenancy.
11. In terms of Regulation 10 "if satisfied that the landlord did not comply with any duty in Regulation 3 the First tier Tribunal
 - (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 First tier Tribunal 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."
12. In terms of Regulation 3 "(1) A landlord who had received a tenancy deposit in connection with a relevant tenancy must, within 30 days of the beginning of the tenancy (a) pay the deposit to the scheme administrator of an approved scheme;

Findings in fact:

- I. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement for the property on 4 July 2019.
- II. The Respondent is the landlord stated in the Tenancy Agreement (clause 2)
- III. The Applicant paid a deposit of £300 to the landlord on 26 June 2019.
- IV. The tenancy started on 4 July 2019.
- V. The tenancy ended on 17 October 2019.
- VI. The deposit was not lodged with an approved scheme.
- VII. The Respondent has more than one rental property and has been renting out the property for over 10 years.
- VIII. The clause in the tenancy agreement dealing with the deposit (Clause 10) states that the scheme administrator is Safe Deposit Scotland and provides a contact telephone number.
- IX. It states that the landlord must lodge any deposit they receive with a tenancy deposit scheme within 30 working days of the start of the tenancy
- X. The Applicant acknowledged receipt of the sum of £155 on 18 October 2019 representing repayment of the deposit less an agreed sum of £145.

Reasons for Decision:

13. The tribunal considers that the landlord did not comply with the requirements of Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.
14. The deposit was not paid over to an approved scheme within 30 working days of the commencement of the tenancy agreement.
15. Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 is a regulatory sanction to punish the landlord for non-compliance with the rules. The non-compliance with the Regulations is not disputed by the landlord.
16. Ultimately the Regulations were put in place to ensure compliance with the Scheme and the benefits of dispute resolution in cases of disputed deposit cases, which the Schemes provide.
17. Whilst the Tribunal notes the request in the written submissions of the Applicant for payment of the maximum of three times the deposit amount, the Tribunal does not agree that the case warrants the maximum remedy.
18. The Tribunal considers that the discretion of the Tribunal requires to be exercised in the manner set out in the case *Jenson v Fappiano* (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015 by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case.
19. The Tribunal took into account the length of time the deposit was unprotected, which the whole tenancy period, the fact that the landlord had selected a specific registered scheme and stated this and the landlord's obligation regarding the deposit in the tenancy agreement and thus must have been aware of her obligations, the fact that the Respondent has been letting property for a considerable time and thus is familiar with the process of lodging the deposit and that ultimately the action of the Respondent meant that the Applicant would not have had access to the dispute resolution process envisaged to be used under the Regulations. On the other hand the Tribunal also took into account that the Respondent credibly stated she never intended not to pay the deposit back, that she had returned the agreed outstanding sum within 24 hours of the end of the tenancy and that she credibly stated that she had learned through the process and would not repeat this mistake.
20. In all the circumstances the tribunal considered it fair, proportionate and just to make an order for the sum of £450, which constitutes a meaningful sanction for non-compliance of the Regulations at the level of 1 1/2 times the deposit sum of £300.

Decision:

21. The First-tier Tribunal for Scotland (Housing and Property Chamber) grants an order against the Respondent for payment to the Applicant of the sum of £450 in terms of Regulation 10 (a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

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.

Petra Hennig Mcfatridge

**Legal Member/Chair
Decision**

6.2.2020

Date