

Housing and Property Chamber
First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16, Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/PR/18/2623

Rule 103 - Application for an Order for Payment where Landlord has not paid the deposit into an Approved Scheme

Re: 6 Hopeman Street, Glasgow, G46 8EZ ("the Property")

Parties:

Carla Helen Arnott, 8b Henderson Street, Paisley, PA1 2SJ ("the Applicant")

Nazia Ali, 71 Inverewe Avenue, Deaconsbank, Glasgow, G46 8TQ ("the Respondent")

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent failed to comply with her duty as a Landlord in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") as amended by The Housing (Scotland) Act 2014 (Consequential Provisions) Order 2017 by failing to pay the Applicant's Tenancy Deposit to the scheme administrator of an Approved Tenancy Deposit Scheme under the 2011 Regulations, grants an Order against the Respondent for payment to the Applicant of the sum of Five Hundred and Fifty Pounds (£550.00) Sterling.

Background

1. By application dated 1 October 2018 the former tenant/applicant applied to the First-tier Tribunal for Scotland (Housing and Property) Chamber for an order for payment where a landlord has not paid a deposit into an approved

scheme in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011("the 2011 Regulations"). The applicant also lodged a copy a Private Residential tenancy with the Respondent, a receipt dated 28 February 2018 for £1100 and emails from the Letting Protection Scotland, My Deposits Scotland and Safe Deposits Scotland dated 23 October 2018. She also lodged an email from Deposit Protection Service.

2. On 21 December 2018 the Tribunal issued a Notice of Acceptance of the Application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").
3. On 14 January 2019 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 30 January 2019. The Tribunal advised both parties on 14 January 2019 that a Case Management Discussion under Rule 17 of the Regulations would proceed on 1 February 2019. This paperwork was served on the Respondent by Andrew Fraser, Sheriff Officer, Glasgow on 14 January 2019. A certificate of execution of service was received by the Tribunal administration.
4. The Respondent made written representations on 29 January 2019. She also lodged a number of text messages, photographs and an email from Deposit Protection Service dated 22 March 2018.

Case Management Discussion

1. The Tribunal proceeded with the Case Management Discussion on 1 February 2019. The Applicant was personally present. She was accompanied by her mother. The Respondent appeared personally with her daughter Sarah Ali. The Respondent indicated that she wanted her daughter to represent her. The Respondent understood English, but as her spoken English was not fluent she confirmed she would speak through her daughter Ms Ali. The Respondent confirmed she did not want an interpreter. The Tribunal was accordingly satisfied that the Respondent was able to fully participate in the Case Management Discussion.
2. Parties agreed that there had been a Private Residential Tenancy Agreement in relation to the Property which terminated of 1 October 2018. In terms of clause 1 of the Tenancy Agreement the Applicant agreed to pay a deposit of £550. The other party named as the Landlord Mr Javad was the Respondent's husband. The Applicant explained that she was not sure who the Landlord was. She dealt initially with Ms Ali and a subsequent search of the title had shown only the Respondent as the owner.
3. Ms Ali explained the Respondent had received the £550 deposit on 28 February 2018. The Tribunal referred to the receipt dated 28 February 2018

which was lodged by the Respondent. Ms Ali confirmed that was the receipt issued to the Applicant.

4. Ms Ali explained on behalf of her mother that this deposit was the first deposit the Respondent had had to deal with since the introduction of the 2011 Regulations as the Respondent had previously had long term tenants in the Property going back about 5 years and the previous tenant before the Applicant had not paid a deposit. She explained the Respondent had made an internet search and that the Deposit Protection Service ("DPS") had shown up. The Respondent had paid the deposit into DPS within what she referred to as the 21 day period and that a Deposit Certificate had been issued on 22 March 2018 as per their email to the Respondent which was before the Tribunal. She explained that the Respondent understood that DPS also covered Scotland.
5. The Respondent through Ms Ali went onto explain that she understood DPS had emailed the Applicant about this time to advise her that they, DPS, held her deposit. The Applicant denied she had received any email from DPS.
6. The Tribunal referred the Respondent to a page of a few text messages with a photograph of the deposit certificate from DPS. The Tribunal pointed out to the Respondent that the address on the certificate was slightly different from the Property address and was shown as 6 Hopemane Street, Thornlibank and that the postcode NG46 8EZ was not the postcode of the Property which had a postcode of G46 8EZ. The Respondent explained she had registered the deposit under the correct address and that DPS must have made a mistake. She confirmed on more than one occasion that these messages had passed with the Applicant in March 2018.
7. Ms Ali explained that when her mother the Respondent had carried out an internet search for the tenancy deposit scheme and was not aware of other schemes. She explained the Respondent did not have very much technical ability. The Respondent confirmed she was a registered Landlord with Glasgow City Council and that she had one other property she leased out. She had been a Landlord for about 6-7 years, however had not received any correspondence regarding the 2011 Regulations.
8. The Applicant explained to the Tribunal that she had only been sent a copy of the deposit certificate in September 2018 as shown in the page of text messages. She denied that the text messages were from March 2018 as claimed by the Respondent as her baby, which she has referred to in one of the messages, had not been born until 1 May 2018. When the Tribunal asked for clarification of this with the Respondent who had been clear the messages had been sent in March 2018, Ms Ali explained that the deposit certificate had

previously been sent to the Applicant in March 2018 and then resent in September 2018.

9. The Applicant explained that she understood the deposit was held by DPS. DPS covered England and Wales. Her deposit appeared to be registered under the postcode of NG64 8EZ which she understood to be a Nottingham postcode. There was a dispute as to the amount of deposit that should be returned to the Applicant. The deposit had not been returned to her.
10. The Applicant also explained and referred to the emails before the Tribunal dated on or about 23 October 2018. The Applicant received notification from Letting Protection Service Scotland that they had been unable to locate the deposit. The Applicant also referred to the emails dated 23 October 2018 from My Deposits Scotland and Safe Deposits Scotland that they had no record of the Applicant's deposit. She advised that Ms Ali had initially told her the deposit would be paid into Safe Deposit Scotland.
11. She also referred to an email from DPS dated 29 October 2018 in which DPS stated they could not locate her deposit. The Applicant explained that she had tried to log in as a tenant through the DPS website, but had not been able to do so. She had not made any other enquiries with DPS. She explained she was stressed as she had not received any correspondence from DPS about her deposit and she simply wanted her deposit back.
12. Ms Ali explained she understood from DPS that they had contacted the Applicant regarding the return of the deposit as there was damage at the Property and were waiting for a response from the Applicant. The Applicant maintained she had received no emails from DPS.
13. The Tribunal explained to the Applicant that it had no jurisdiction to determine the division of the deposit. The Tribunal however could make a determination under the 2011 Regulations in relation to the Respondent's failure to pay the deposit into an approved tenancy deposit scheme in terms of the 2011 Regulations.

Findings In Fact

14. The Applicant lived in the Property between 28 February -1 October 2018 in terms of a Private Residential Tenancy Agreement with the Respondent and Nasir Javad, the Respondent's husband. In terms of clause 1 of the tenancy agreement the Applicant agreed to pay a deposit of £550.

15. The Applicant duly paid the deposit of £550 together with the first month's rent of £550 to the Respondent on or about 28 February 2018. The Respondent issued a receipt dated 28 February 2018 for £1100.
16. On or about 22 March 2018 the Respondent paid the deposit of £550 into DPS. DPS are not an approved tenancy deposit scheme administrator in Scotland, DPS issued a deposit certificate to the Respondent on 22 March 2018. The certificate refers to a postcode and address which is different from the Property address.
17. The Respondent sent a copy of the deposit certificate from DPS to the Applicant in or about September 2018.
18. The Private Residential Tenancy Agreement between the Applicant and the Respondent and Nasir Javad came to an end of 1 October 2018.
19. The deposit was not paid into any of the three approved tenancy deposit schemes in Scotland.
20. DPS still hold the deposit.

Reasons For Decision

21. For the purpose of Regulation 9(2) of the 2011 Regulations the Tribunal found that the application was made in time within 3 months of the tenancy termination. The 2011 Regulations were intended, amongst other things to put a landlord and a tenant on equal footing with regard to any tenancy deposit and to provide a mechanism for resolving any dispute between them with regard to the return of the deposit to the landlord or tenant or divided between both, at the termination of a tenancy.
22. The amount to be paid to the Applicant is not said to refer to any loss suffered by the Applicant. Accordingly, any amount awarded by the Tribunal in such an application cannot be said to be compensatory. The Tribunal in assessing the sanction level has to impose a fair, proportionate and just sanction in the circumstances, always having regard to the purpose of the 2011 Regulations and the gravity of the breach. The Regulations do not distinguish between a professional and non-professional Landlord such as the Respondent. The obligation is absolute on the Landlord to pay the deposit into an Approved Scheme in terms of the 2011 Regulations.
23. In assessing the amount awarded, the Tribunal has discretion to make an award of up to three times the amount of the deposit, in terms of Regulation 10 of the 2011 Regulations. The Tribunal considered that the Respondent's failure was not wilful. She had thought DPS covered Scotland and had acted in good faith in paying the deposit to DPS. However, the Tribunal considered the fact the deposit was not paid into an approved scheme under the 2011

Regulations through the whole of the tenancy was unsatisfactory. The Respondent had been a Landlord for approximately 6-7 years. She should have had knowledge of her duties under the 2011 Regulations. It was unsatisfactory that 4 months after the tenancy agreement had ended, the tenancy deposit had not been returned either in whole or in part and that the Applicant had not been able to access any information from DPS. The Tribunal noted that the issues in this regard may have been as a result of the deposit being registered under a different postcode as shown in the deposit certificate. The Applicant had been stressed by the situation and simply wanted her deposit back. The purpose of the 2011 Regulations had been defeated.

Decision

24. In all the circumstances, the Tribunal was not inclined to order the maximum amount of three times the Tenancy Deposit. The Tribunal considered that a fair, proportionate and just amount to be paid to the Applicant was Five Hundred and Fifty Pounds (£550) Sterling and accordingly made an Order for Payment by the Respondent to the Applicant.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

S Evans

Shirley Evans
Legal Member/Chair

1 February 2019
Date