



**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**

Chamber Ref: FTS/HPC/PR/18/3285

**Re: Property at 26D Braeface Road, Seafar, Cumbernauld, Glasgow, G67 1HN
("the Property")**

Parties:

**Mr Steven McCondochie, 99 Ben Venue Road, Eastfield, Cumbernauld,
Glasgow, G68 9JE ("the Applicant")**

**Mrs Lyndsey Pettigrew, 24 Ashgrove Gardens, Loanhead, Edinburgh, EH20
9GA ("the Respondent")**

Tribunal Members:

Melanie Barbour (Legal Member)

Decision

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

Background

1. 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 deposit in relation to a tenancy for the Property.
2. The application contained a copy of the Tenancy Agreement, and evidence of the end of the tenancy. The Applicant advised that the Respondent had failed to submit the deposit of £395 to an approved scheme.
3. The Applicant attended the case management discussion. On behalf of the Respondent, Catrina Maxwell and Donna Cramb from K-Property,

Estate Agents appeared. They were also the letting agents for the property.

4. Written representations dated 12 and 13 March 2019 had been received from the Respondent and her representatives prior to the hearing. The Applicant confirmed that he had had the opportunity to see and consider those representations.

The Case Management Discussion

5. The Applicant advised that he was seeking an order as his deposit had not been lodged with any approved scheme. He had also not been provided with all the prescribed information.
6. Parties agreed that the tenancy had commenced on 30 August 2018. That the Applicant had given notice to terminate the tenancy on 3 October 2018. That the Applicant had left the property on 29 October 2019. That the tenancy deposit of £395 had been received from the Applicant. That it had been held by the letting agents. That it should have been put in an approved scheme on or before 11 October 2018 to comply with the 30 working days' time limit as required by the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations").
7. The Applicant submitted had been lied to and misled in relation to his deposit by the letting agent. That it was the landlord's duty to ensure that the deposit was paid into a scheme. He advised that on 29 October at 11:15am he had called the letting agents and asked what scheme the deposit was in, he stated that they did not confirm this to him on that day; and he advised that he had also asked about receiving compensation as he considered he was entitled to this as the property had been damp and this was the reason that he had handed in his notice to leave the property.
8. He submitted that he had not been given information from the letting agents as to what had happened to his deposit, and he therefore wrote to the landlord on 9 November 2018 requesting information about it. He advised that he had then received an email from the letting agents on 20 November 2018. The email advised that the deposit had been paid to him by BACS transfer on made on 3 November 2018. The Applicant advised that his letter to the landlord had asked for certain information regarding the tenancy deposit, which scheme it had been lodged with, contact details and so forth. No response to this information had been given.
9. He confirmed that he had been aware that £395 had been paid into his account on 5 November 2018; he had however assumed that this money was for compensation.
10. He advised that he had also spoken with the letting agent at 4.10pm on 29 October 2018 and this is when he had raised the issues of receiving compensation for the condition of the property.

11. He advised that the next contact he had with the letting agent was on 20 November 2018, this was in reply to the letter he had sent to the landlord. The email from the letting agents advised that the deposit had been repaid to him by BACs transfer on 3 November 2018.
12. He advised that on 20 November 2018 he had replied to the letting agent. He advised that his letter to the landlord had not mentioned the deposit but has sought information about the holding of the deposit, and he had emailed the letting agent back in order that they could ensure that the landlord was properly educated about a landlord's duty in relation to the holding of tenancy deposits
13. He advised that the second response he received from the letting agents on 20 November 2019 made reference to the money being held in a scheme; and that they would check out what scheme the money had been put into.
14. He submitted that the Respondent had not lodged the deposit into an approved scheme. He was aware that the letting agents have now submitted that this was because he had handed in his notice for the property on 3 October 2018. He submitted however that a government website providing information on tenancy deposits, gives examples of when a tenancy deposit might not be paid into a scheme and this is not one of the examples given. He considered that as he was handing in his notice, then the security of his deposit was all the more important, and the need to have it placed in a deposit scheme was more pressing. He felt he had been misled.
15. In response, the Respondent's representative, confirmed that they were also the letting agents who had acted for the Respondent in this letting of this property. They advised that they had worked in this business for a number of years and this was the first time that they had encountered a situation when a tenant had handed in notice to quit after only two weeks.
16. They advised that while the Applicant had given notice stating that the property had damp, this was disputed as the property had subsequently been sold and the home report had shown no damp within the property. That said they accepted that the Applicant believed this to be the case and they did not dispute his concerns about the property.
17. The Respondent's representative advised that the deposit had been in a client account and in the usual course of business, within 30 working days they would have lodged the deposit with Safe Deposits Scotland. This is reflected in the lease agreement.
18. She advised however on this occasion, they had received the notice to quit on 3 October 2018, Ms Maxwell had advised the letting manager, Ms Cramb, not to put the money in to the approved deposit scheme, as they would return it to the Applicant at the end of the tenancy. She advised that

it can take up to 30 days to receive the money back from Safe Deposits Scotland and she submitted that she had thought it would be of greater benefit to the tenant to receive the money immediately at the end of the termination period. While she did not accept that there was damp in the property she appreciated that the tenant had been concerned that there was and had sought to the end of the tenancy; given that they would have to move house twice in two months, she had thought that this was a better way of dealing with the deposit for the tenant.

19. She advised that she now appreciated that there was a breach of the tenancy deposit regulations, and she accepted this. She took full responsibility for this breach. She advised however that there was no intention not to pay the deposit back to the tenant.
20. She advised that the Applicant had asked for compensation for the property; however the landlord had been contacted about this on 29 October 2018 and had advised that she was not prepared to offer compensation. She advised that the Applicant had been advised on 29 October 2018 that the landlord was not offering to pay any compensation.
21. She advised that the exit inspection had taken place on 29 October 2018. The usual practice of this inspection is that, the person doing the inspection would confirm arrangements for the return of the deposit. She advised that the deposit is sometimes returned from Safe Deposits Scotland direct to the tenant and sometimes direct to the landlord to deliver on. She admitted that she now appreciated that she should have told the Applicant that the deposit had not been placed into a scheme. She did not accept however that he had been misled. The deposit was repaid to him as soon as the tenancy had ended and they had obtained confirmation from the landlord to repay it.
22. She advised that she was not disputing that the money had not been paid into an approved account. It was however, the first time she had encountered such a situation. She advised that she does not work like this and does not fail to pay deposits into schemes.
23. She advised that she manages a number of properties including one for the landlord, and she is aware of the duties under the 2011 Regulations and she submitted that she is responsible in ensuring that she discharges them properly.

Findings in Fact

24. On the information before the Tribunal I found the following facts to be established:
25. A tenancy agreement was entered into between the Applicant and the Respondent for the property and existed between the parties. It was entered into on 30 August 2018.

26. The Tenancy ended on 29 October 2018.
27. The application to the tribunal had been made on 29 November 2018.
28. There is a clause in the lease agreement entitled "Deposit" which confirms that of £ is payable as a deposit, and that this sum will be returned to the Tenant at the end of lease subject to any dispute being resolved by the approved scheme administrator.
29. The sum of the deposit was not specified in the lease. Parties agreed that the sum was £395.
30. That the deposit had been paid by the Applicant to the Respondent.
31. That the deposit had not been paid into an approved scheme.
32. The Respondent had repaid the deposit belonging to the Applicant by BACs transfer on 3 November 2018.

Reasons for Decision

33. The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out 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—

(c) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(d) 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.

34. There was no dispute that there had been breach of the regulations in relation to not placing the deposit into an approved scheme within 30 working days. There also did not appear to be a dispute that all of the prescribed information had not been provided to the Applicant. Therefore the terms of regulation 10 apply and I must make an order not exceeding three times the amount of the tenancy deposit.

35. I consider that this case is at the lower end of any penalty as the breach appears to have arisen solely on the basis that the Applicant had given notice to quit the property before the expiry of the 30 working day period in which a deposit had to be lodged; and the letting agents had therefore believed that it would be of benefit to hold the deposit and return it once the notice period had expired.

36. It is the case that it is the landlord who is responsible for ensuring that the deposit is paid, but I cannot ignore the submission of the letting agents who acted with her authority in terms of why the deposit was not paid.

37. I would tend to agree with the Applicant that the fact that he was ending his tenancy made it more important that the deposit should be safeguarded, as in the event of a dispute this would be when the tenant should be able to rely on the protection afforded by the approved scheme. Therefore I do not consider that the position adopted by the letting agent is acceptable as it would appear to me to misunderstand the purpose of the tenancy deposit regulations. That said however, in this case their failure to put the deposit into an approved scheme did not cause prejudice to the

Applicant, given that his tenancy was of very short duration, and once it had ended the deposit had been promptly returned to him.

38. The Respondent submitted that they would act responsibly and ensure deposits are routinely paid into approved schemes it was the timing in this case which led to their failure. While I do not consider the Respondent's actions are acceptable, it does appear that there was no underlying intention on their part to thwart the purpose of the regulations and they appeared to be trying (albeit misguided in law) to be of more assistance to the Applicant by holding the deposit.
39. The Respondent's representative was clear that they accepted responsibility for this error.
40. While I appreciate that the Applicant had put in additional time to finding out that the money paid into his account was a deposit and not compensation, I do not consider that this was excessive and caused by the actions of the landlord or her representatives trying to mislead or misguide him.
41. I did however consider that the Respondent and her representatives should have ensured that the Applicant was better informed in relation to deposit being paid back to him. It did appear to me that the second email response he received on 20 November 2018, showed limited effort by the Respondent's representative to ensure the accuracy of the information provided.
42. Taking all matters into account and having regard to the terms of the application, the written submissions by the Respondent and her representative, and the verbal submissions of both parties today, I do not think there had been a flagrant disregard for the provisions of the regulations on this occasion. I consider that the period when the Applicant's deposit had not been protected, was in fact relatively short in duration and the deposit had been paid back immediately in full at the end of the tenancy and therefore he had not in fact been prejudiced to any great extent.
43. As set out above Regulation 10 provides that if I am satisfied that the landlord did not comply with any duty in regulation 3, then I must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.
44. On the basis of the evidence submitted, I consider that I should make an order the landlord to pay the tenant £100.

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.

Melanie Barbour

Legal Member/Chair

1. 4. 19

Date