



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under The Tenancy Deposit Schemes (Scotland) Regulations 2011 as amended by The Tenancy Deposit Schemes (Scotland) Amendment Regulations 2019. (“the Regulations”).

Chamber Ref: FTS/HPC/PR/20/0679

Re: Property at Flat 1/2, 20 Bulldale Place, Yoker Quay, Glasgow, G14 0NE (“the Property”)

Parties:

Dr Abhinandan Punit, Dr Ankita Punit, C/O Raeside Chisholm Solicitors, Tontine House, 8 Gordon Street, Glasgow, G1 3PL (“the Applicants”)

Ms Joyce Rose, 23 Hilton Gardens, Glasgow, G13 1DR (“the Respondent”)

Tribunal Member:

Martin McAllister (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the sum of One Thousand One Hundred Pounds (£1,100) to the Applicant.

Background

On 26th February 2020 the Tribunal received an application from the Applicant seeking payment of a sum in compensation under the regulation 10(a) of the Regulations.

The date of the case management discussion was intimated to the Respondent. Both the Applicant and the Respondent made written representations.

A case management discussion was held on 13th August 2020. It was held by audio conferencing because of the current public health emergency.

The Law

The Tenancy Deposit Schemes (Scotland) Regulations 2011

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.

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.

Case Management Discussion

Mr David Doig, Solicitor, appeared on behalf of the Applicant and Mr Kevin Duffy appeared on behalf of the Respondent. Both referred to their written representations.

Written Representations for Applicants

Reference is made to a deposit of £750 being paid in respect of a private residential tenancy agreement entered into between the Applicant and the Respondent in respect of the Property. It is stated that the start date of the tenancy was 7th August 2018.

Reference is made to the respondent lodging £250 into an approved tenancy deposit scheme rather than the sum of £750 which had been paid by the Applicant and that this was in breach of Regulation 3(1) (a) of the Regulations. The representations refer to the Respondent failing to comply with a landlord's obligation to provide certain information to the Applicant which was stated to be in breach of Regulation 3(1) (b) of the Regulations.

The representations refer to the Respondent's attempts to utilise the unprotected part of the deposit (£500) towards deductions which she sought to impose on the Applicant and refer to WhatsApp messages (copies of which had been lodged with the application)

Written Representations for the Respondent.

The Respondent accepts that the Applicants paid a deposit of £750 and that only £250 was lodged in an approved deposit scheme.

The Respondent accepts that, by not lodging the full deposit, she did not comply with the obligations incumbent on her in respect of Regulation 3 of the Regulations and states that she regrets this.

The representations state that the Respondent accepts that a sanction will be imposed upon her in terms of in terms of the Regulations but submits that the Tribunal should take into account her partial compliance by lodging the sum of £500.

Both Mr Doig and Mr Duffy said that they had little to add to their written submissions. Both agreed that the material facts are not in dispute and that there would be nothing to be gained by continuing determination of the application to a Hearing.

Mr Duffy suggested that the sanction to be imposed might be based on the sum not deposited and Mr Doig submitted that the Tribunal had to take into account the terms of the Regulations where reference is made to the deposit and not the deposited amount.

Mr Duffy had no clear answer as to why the whole sum had not been deposited but indicated that there may have been cash flow issues for the Respondent. He said that his client is not a commercial landlord and that the Property is the

only one she rents out. He said that, prior to the Applicants' tenancy, the Property had been let to a family member where there was not a deposit.

Mr Doig said that the Regulations were designed to provide protection to tenants and that, with respect to the £500 which was not lodged with an approved deposit scheme, the Whatsapp messages before the Tribunal disclose that the Respondent was intending to take advantage of the fact that the sum was not protected.

Mr Duffy and Mr Doig indicated that the amount to be fixed as a sanction was a matter for the Tribunal.

Findings in Fact

- 1. The Applicants and the Respondent were parties to a Private Residential Tenancy Agreement for the Property.**
- 2. The tenancy commenced on 7th August 2018 and came to an end on 14th February 2020.**
- 3. The Applicants paid a tenancy deposit of £750 to the Respondent.**
- 4. The Respondent lodged £250 with an approved tenancy scheme.**
- 5. The Respondent did not provide the required information to the Applicants in respect of the Deposit as required by the Regulations.**

Reasons

The facts were agreed and documentary evidence supported the Findings in Fact.

The Sanction

The creation of the tenancy deposit scheme was to protect tenants and provide a structured process of dispute resolution. The reasons for such a scheme were demonstrated by this application. The Respondent received £750 but only lodged £250 in an approved deposit scheme. There was a candid admission that this may have been because of cash flow reasons. The Whatsapp messages before the Tribunal show an exchange of messages between the parties with regard to proposed deductions from the partial deposit of £500. Had the whole deposit been with an approved tenancy deposit scheme, a third party would have been able to adjudicate on these issues and protection would have been provided to the Applicants.

In considering the appropriate sanction the Tribunal had regard to the fact that some of the deposit had been protected, that this appears to be the first time the Applicant had dealt with a tenancy deposit and her acceptance that there had been a breach of the Regulations.

The Tribunal determined that the Respondent requires to pay the sum of £1,100 to the Applicants.

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.

**Martin J. McAllister
Legal Member
13th August 2020**