



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 9 of the Tenancy Deposit Schemes (Regulations) 2011

Chamber Ref: FTS/HPC/PR/20/2504

Re: Property at 92 Dundas Street, Edinburgh, EH3 6RQ (“the Property”)

Parties:

Mr Danny Williams, 68 Brookfield Avenue, Barry, Vale of Glamorgan, CF63 1EQ (“the Applicant”)

Mrs Rosalind Ritchie, Bay House, 1 Pan Ha, Dysart, Fife, KY1 2TL (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent did not comply with the duty in Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 to pay the deposit to the scheme administrator of an approved scheme and ordered the Respondent to pay the Applicant the sum of Two Thousand One Hundred and Eighty Seven pounds.

BACKGROUND

1. This was a hearing to consider an application under Rule 103 for an order under Section 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011. (2011 Regulations).
2. The following was lodged along with the application:-
 - A copy of the Tenancy Agreement dated 3rd July 2017
 - A copy receipt dated 3rd July 2017 showing the sum of £1750 in respect of deposit paid to DJ Alexander along with rent of £1100, less £550 paid as a holding deposit

- E-mail from my deposit Scotland confirming that no deposit was lodged dated 14th September 2020.
3. The Application was duly accepted by the Tribunal but a direction was sent requiring further information namely:-
 - a. Clarification of the spelling of the Respondents name
 - b. Information from the other two deposit companies that no deposit was lodged with them for the tenancy
 - c. Information about whether the full or a partial deposit was returned and if not what explanation was offered.
 - d. Where the deposit was returned from i.e. the landlord or a deposit company
 - e. Any evidence of the end of the tenancy.
 4. The Applicant responded to the requests by e-mail dated 26th January 2021 and confirmed that the Respondents second name was Ritchie and the application should be amended accordingly; he enclosed evidence from Safe Deposit Scotland and Letting Protection Service that neither of them held a deposit for the Property. He further advised the deposit was returned from the landlord's personal bank account and not a deposit scheme and that it was returned in two parts the first, after what the Applicant described as an unpleasant encounter on the street outside the property when he was removing a flower container from the communal area, and the balance some days later after seeking justification for the deductions and evidence that the deposit was put into a scheme. The Applicant also copied a text message showing the end of the tenancy was 5th September 2020.
 5. A Case management discussion was scheduled to take place on 2nd March 2021 and both parties were sent details of how to participate in the CMD which took place by teleconference due to the current pandemic.
 6. The Respondent replied to the request for any written submissions by sending in a detailed written response dated 15th February 2021. Included in this response was clarification that the Respondent's name is Rosalind Ritchie, and a written admission that the Respondent had not lodged the deposit in any tenancy deposit scheme. The Respondent explained that she has 2 flats she owns which she rents out and has done for 20 years and she had previously always used the firm Rettie as an agent to find and arrange the initial tenancy for these flats, to do the research into credit and referencing and lease preparation, signing and deposit taking and lodging. She advised that as her usual team from Rettie were not available at the time she was seeking a tenant for this Property and as she did not have confidence in the replacement staff, she thought she would use a new representative from DJ Alexander who she had met socially. She openly admits she thought the same arrangements would apply and did not think to check on the deposit until the end of the tenancy when her tenant the Applicant asked where the tenancy deposit was. She states "They were very helpful and secured a tenancy etc. and I am afraid I made the assumption that all would continue as it had before. Unfortunately DJ Alexander does not lodge the deposit but I had not noticed this. I regret to say that I had not given it any thought until the end of the tenancy. When Mr Williams asked me where the deposit was lodged it was a rather heart stopping moment when I realised that I did not know – made even worse when I couldn't find the paperwork for it."

7. The Respondent also advised and has lodged paperwork to confirm that when she let out her other flat herself directly without using an agent to find the tenant a\|s she was contacted directly by a potential tenant she lodged the deposit in a tenancy deposit scheme. She comments that this was a genuine mistake and not at all a premediated act. She also goes on to confirm that she tried to explain this to the Applicant but he kept shouting at her in the street. She concludes her statement by stating that this failure has not happened before or since.
8. The Respondent further advised that her husband suffers from an advanced illness that means he requires 24 hour care in most aspects of his life and that as his condition has deteriorated, this has left little time for the Applicant who is trying to avoid any stress on him and when she goes out she has to arrange carers for him. She advised that she is not adept at technology and does not do internet banking or telephone banking and looks after the tenancies with the help of a friend who runs a maintenance company.

The Discussion

9. Both the Applicant and the Respondent participated in the CMD which took place via conference call due to the requirement for social distancing due to the Covid 19 pandemic. Neither party was represented. The legal member explained the purpose and manner of the Hearing and confirmed that the purpose of the hearing was to consider the application for a penalty in respect of the failure to lodge the tenancy deposit timeously in a tenancy deposit scheme.
10. The legal member asked the Applicant to confirm that what he was seeking was a penalty for failure to lodge a tenancy deposit into a tenancy deposit scheme as he had mentioned in his application certain issues about multiple concerns not being addressed in the tenancy such as rodents accessing the tenancy through holes in the wall. The Applicant confirmed that he was indeed looking for a penalty in terms of the Tenancy deposit regulations and that he mentioned issues with the tenancy as this had made him concerned about where the deposit was and when he enquired he found out it had not been lodged. He advised he felt then that he should move elsewhere as the element of trust had failed.
11. The Respondent confirmed as per her written submissions that she admits she failed to lodge the deposit because she thought that her agent who she had hired to find a tenant and do the credit check and initial paperwork would have done so as the agent she normally uses does do that.
12. The legal member advised the parties that the Regulations make it clear that breach of the Regulations which require all deposits to be placed within one month in a recognised tenancy deposit scheme is a strict liability. That the Tribunal (formerly the Sheriff) “must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.” The legal member explained that as the facts regarding the deposit not being lodged in time were not in dispute it was a matter of deciding what penalty should be awarded.
13. The parties both agreed that they had entered into a lease of the Property and the Applicant advised he was there for 3 years and had always paid his rent. He advised that the deposit was returned in two parts and in his written submission explains that initially £1570 was returned from the landlord’s personal bank

account and that there had been no adjudication and no justification or explanation of these deductions. He goes on to confirm that the remainder of £180 was returned some days later after seeking justification for the deductions and evidence that the sum had been put into a scheme. The Applicant advised he felt this had put him in a difficult position when he found that the deposit had not been secured.

14. The Respondent was then asked for her comments and the Respondent confirmed that she had made a mistake in assuming DJ Alexander had lodged the deposit in the letting protection service scheme (this being the only scheme she was aware of as this is the one she and Rettie had always used.). She advised that she had always previously used the firm Rettie that they would lodge the tenancy deposit and then it would be transferred into her name as she manages the property directly. She advised further that she does not do internet banking that she would normally only check her bank accounts every 6 months or so and that as a result she failed to notice the deposit monies in her account. She confirmed that as per her written submissions about her husband she had been pre occupied with personal matters and didn't have time to check. If she had she advised she would have lodged it earlier. The Respondent also confirmed that she did try and sell the Property after the tenant moved out but was told it was a difficult time to sell and so rented it out again and used Rettie to arrange this. In response to the Applicant asking why 2 payments were made and suggesting this was due to complaints about cleaning the Respondent advised that it was simply there was not enough money in her account to transfer the whole deposit and that she arranged to transfer more money into it and then transferred the balance. Both parties were not clear how long the gap was but the Applicant thought it was a few days. The Respondent confirmed she went into the bank to arrange the bank transfer it was not done by internet banking.
15. The Respondent has also lodged in her written representation submissions regarding repair issues which she feels the Applicant has raised in his application and which she felt obliged to respond to including a statement from a third party that a man who appeared to live in the Property was shouting at the Respondent in the street. The Tribunal confirmed that the Applicant is not raising a claim for any other matter such as damages and therefore most of the further responses are not relevant.

- **Findings in Fact**

16. The Respondent entered into a lease with the Applicant whereby the Applicant leased the Property from the Respondent from 3rd July 2017 The rent due was £1100 per month.
17. The deposit paid by the Applicant to the Respondent was £1,750. The deposit was paid on 3rd July 2017
18. The tenancy continued from 3rd July 2017 until 5th September 2020
19. The Applicant was not at any time given information about where his deposit had been placed.
20. The Applicant raised an application for payment of an order under Rule 9 of the Regulations on 30th November 2020

21. The Deposit was never placed in an approved scheme for the duration of the tenancy.
22. That the Landlord would usually use another agent Rettie, who did normally, lodge the deposit in a tenancy deposit scheme before transferring control of the tenancy and deposit scheme paperwork to the landlord.
23. That the Respondent in this occasion has used a different agent who did not place the deposit in a tenancy deposit scheme
24. The Deposit was fully returned to the Applicant at the end of the tenancy, in two parts, £1570 initially returned followed by £180 a few days later, both returned directly from the landlord's bank account.

Reasons for Decision

25. The Tribunal found that the Respondent has failed to comply with the duty set out in Section 3 of the 2011 Regulations by failing to place the deposit in an approved scheme within 30 days of the beginning of the tenancy.
26. That in terms of Section 10 of the 2011 Regulations the Tribunal is obliged to make an order that the landlord pay the tenant an amount not exceeding three times the amount of the tenancy deposit.
27. The Tribunal found both parties to be credible in their submissions and statements.
28. The parties are not in dispute that the deposit of £1,750 made by the Applicant to the Respondent was not lodged timeously within the required 30 days and in fact was not lodged for three years after the tenancy started. The Respondent has freely admitted this was a mistake that she used a different agent in finding the tenant and setting up the tenancy and that they did not lodge the deposit which is what her usual agency, Rettie would do at the start of a tenancy.
29. The Tribunal has to consider what penalty is appropriate and in doing so has considered the mitigating circumstances the Respondent has put forward, namely that she had mistakenly thought DJ Alexander who she used on this occasion to find and carry out the initial tenancy checks and preparation had not done what her usual agent would do, which is lodge the deposit in a scheme. That she had not checked on that situation or properly examined her bank accounts due to increased stress from caring for her husband. The Tribunal also notes that she has repaid the deposit in full at the end of the tenancy albeit in two parts. The Applicant alleged this was only returned after he asked what justification there could be for any deduction while the Tribunal accepts the Applicant probably did ask for this the Tribunal found the Respondent to be credible in her submission that she just did not have enough money in her account to transfer the whole amount, that she returned what she could and arranged to transfer the remainder of the money to settle the amount as soon as possible, and that this smaller sum was paid within a few days. .
30. The Tribunal has to weigh that up along with the position that a responsible landlord knows that all deposits require to be lodged in an authorised scheme and that she is required to do so. The Regulations have been in force since 2011. The landlord is fully aware of her obligations as she is an experienced landlord and has openly admitted this is a mistake. However the deposit has remained unprotected for over 3 years and the requirement is there so that the

Tenant has his deposit protected and that at the end of the tenancy if there is any dispute he can avail himself of the independent dispute adjudication service offered by the statutory deposit schemes. This protection has not been afforded to the Applicant.

31. The Tribunal finds that this was not a deliberate or malicious attempt to avoid placing the deposit in a tenancy deposit scheme but a genuine mistake, brought about by using a different agent and not checking their processes, compounded with poor attention to checking the landlords own bank account which should have revealed the fact there was more money there than expected. The Landlord however is and has been under stress due to her caring responsibilities for her husband, she has paid the deposit back in full and has admitted to the error. She is an individual landlord who normally lodges her deposits and although an experienced landlord, has shown this was a genuine error compounded by personal circumstances that meant it has not come to light until the end of the tenancy. The tenant has received his deposit back although he feels this has broken the trust he had in the landlord.
32. Weighing up all these factors the Tribunal considers that an appropriate penalty would be an amount of one and a quarter of the deposit and that this is a reasonable and appropriate penalty.

- **Decision**

The Tribunal awards the sum of Two thousand one hundred and eighty seven pounds as a penalty for failure to lodge the deposit in a tenancy deposit scheme within 30 days.

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.

J Todd

Legal Member/Chair

2 March 2021

Date