



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/21/1103

Re: Property at 17/3 Ferry Road Avenue, Edinburgh, EH4 4BE (“the Property”)

Parties:

Miss Julija Polevaja, 177/2 Pleasance, Edinburgh, EH8 9RU (“the Applicant”)

Li Lin, 106/5 Lisson Grove, London, NW1 6LP (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent(s) for payment of the undernoted sum to the Applicant(s):

Sum of SIX HUNDRED POUNDS (£600) STERLING

- Background
 1. An application was submitted to the Tribunal under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. Said application sought an order be made against the Respondent on the basis that the Respondent had failed to comply with his duties to lodge a deposit in a tenancy deposit scheme within 30 working days of the start of the tenancy in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).
- The Case Management Discussion
 2. A Case Management Discussion (“CMD”) took place on 14 July 2021, by tele-conference. The Applicant was personally present and representing themselves. There was no appearance by or on behalf of the Respondent. The application had

been served on the Respondent by Process Server on 7 June 2021. The Tribunal was accordingly satisfied that the Respondent had sufficient intimation of the date and time of the CMD, and that the CMD could proceed in their absence.

3. The Applicant sought an order from the Tribunal on the basis that the Respondent had failed to comply with their duties to lodge a deposit in a tenancy deposit scheme within 30 working days of the start of the tenancy in terms of Regulation 3 of the 2011 Regulations.
4. The Applicant submitted that they had entered into a tenancy with the Respondent which commenced 1 July 2020. No written tenancy agreement had been provided to her. A deposit of £300 was paid to the Respondent. This was not paid into a tenancy deposit scheme within 30 working days of the start date of the tenancy, as provided for in the 2011 Regulations. The Applicant vacated the property on 30 April 2021. When the Applicant requested repayment of her deposit this was refused. When she asked the Respondent why the deposit had not been put into a tenancy deposit scheme, the Respondent told her she hadn't been able to do so as she didn't have the Applicant's email address. The deposit was thereafter paid by the Respondent into a deposit scheme on 10 May 2021. Since raising the application, the Applicant has applied to the scheme for return of the deposit, and this was repaid to her in full on 10 June 2021. The Applicant sought an Order from the Tribunal in the sum of £600, being two times the deposit amount.

- Findings in Fact

5. The Tribunal made the following findings in fact:

- (a) The parties entered into a private residential tenancy which commenced 1 July 2020
- (b) The Applicant paid a deposit of £300 to the Respondent;
- (c) The Respondent failed to timeously lodge the deposit of £300 into an approved tenancy deposit scheme under Regulation 3 of the 2011 Regulations;
- (d) The Respondent failed to provide the statutory information to the Applicant under Regulation 42 of the 2011 Regulations;
- (e) The Tenancy ended on 30 April 2021;
- (f) The Deposit had been lodged by the Respondent into an approved tenancy deposit scheme on 10 May 2021. This had since been repaid to the Applicant by the deposit scheme.

- Findings in Law

6. The Tribunal made the following findings in law:

6.1 The Respondent was in breach of their duties under Regulation 3 of the 2011 Regulations, which states as follows:

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.*

6.2 The Respondent was in breach of their duties under Regulation 42 of the 2011 Regulations, which states as follows:

42.—(1) *The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).*

(2) *The information is—*

(a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;

(b) the date on which the tenancy deposit was paid to the scheme administrator;

(c) the address of the property to which the tenancy deposit relates;

(d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;

(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and

(f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.

(3) The information in paragraph (2) must be provided—

(a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or

(b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.

6.3 The Tribunal must grant an order in terms of Regulation 10 which states as follows:

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.

- **Reasons for Decision**

7. The Tribunal was satisfied that the Respondent was in breach of their duties under Regulations 3 and 42 as aforesaid. The 2011 Regulations were introduced to provide security for tenants in paying over deposits to landlords and to address an issue with some landlords taking tenancy deposits and then failing to pay them back where they were lawfully due at the end of the tenancy. The 2011 Regulations also provide that parties have access to an independent and impartial dispute resolution mechanism within a scheme to address any deposit deductions which require to be considered.

8. By the Respondent's failure to timeously lodge the deposit into an approved tenancy deposit scheme the deposit was not protected for a period of 10

months and 10 days. The Tribunal considered this to be a significant period of time for a deposit not to have been held securely.

9. The Respondent failed to lodge either a written response to the application, and failed to appear at the CMD to make oral submissions as to her reasons for failure to adhere to the said Regulations. The Tribunal was not satisfied that there was any good reason for the deposit not having been properly lodged.

- Decision

10. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent(s) for payment to the Applicant in the undernoted sum:

SIX HUNDRED POUNDS (£600) STERLING

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.

F. W

Legal Member/Chair

Date: 14 July 2021