



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/21/1918

Re: Property at 2/4, 1 Mearnswood Court, Newton Mearns, Glasgow, G77 6GB (“the Property”)

Parties:

Mr Connor Ferguson, 2/4, 1 Mearnswood Court, Newton Mearns, Glasgow, G77 6GB (“the Applicant”)

Link Housing Association Ltd, 2C New Mart Road, Edinburgh, EH14 1RL (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision

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

Background

This was an application dated 27th August 2021 brought in terms of Rule 103 (Application for order for payment where landlord has not paid the deposit into an approved scheme) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended. The application was made under Regulation 9 of the *Tenancy Deposit Schemes (Scotland) Regulations 2011* (“the 2011 Regulations”).

The Applicant seeks payment of compensation in respect of an alleged failure by the Respondent to pay the deposit the Applicant provided of £607.37 in relation to the tenancy into an approved scheme within 30 days of receipt of that sum.

The Applicant provided with his application copies of a tenancy agreement and various supporting documentation.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 22nd September 2021, and the Tribunal confirmed execution of service.

The Respondent helpfully e-mailed its written response to the Tribunal in advance of the Case Management Discussion.

The Case Management Discussion

A Case Management Discussion was held on 25th October 2021 by Tele-Conference. The Applicant participated, and was not represented. The Respondent's Head of Private Initiatives, Mrs Dunsmore, participated, and the Respondent was not represented.

Mrs Dunsmore accepted that the Respondent was in breach of the 2011 Regulations, as it had done in its written response and submission to the Tribunal lodged in advance of the Case Management Discussion.

The Tribunal will not repeat in detail the content of that submission, which provided substantial and full information together with a number of attachments. In summary, due to human error on the part of two of the Respondent's employees, each had thought the other had attended to lodging the Applicant's deposit.

Normally, that oversight would have been picked up by the Respondent's management and accounting systems. However, by unfortunate coincidence, the error occurred at the same time as the Respondent was changing that system to an updated version, which meant that the error was not spotted as it ordinarily would have been.

Ultimately, some four months after the deposit was paid on 25th March 2021, the Respondent did realise that it still held the Applicant's deposit in its bank account, and it immediately arranged for it to be lodged with an approved scheme on 23rd July 2021.

Thereafter, the Respondent immediately contacted the Applicant to apologise to him and advise him of the error. The Respondent also advised the Tribunal and the Applicant of the actions it had taken to deal with the error, which apart from lodging the Applicant's deposit in an approved scheme, also involved it undertaking a full internal enquiry to ascertain and understand what had gone wrong, and implementing a number of new procedures and cross-checks to ensure such an error could not happen again.

Mrs Dunsmore offered the Respondent's apologies, and confirmed that this was the first and only time that it had faced a claim in relation to a breach of the 2011 Regulations. The Respondent is a large professional organisation, which prides itself on its quality of service, and on this occasion it accepted that it had fallen below its usual high standards.

In response, the Applicant accepted the explanation given by the Respondent, and was appreciative of its immediate recognition that it had been at fault on this occasion, and of its explanation of how the error had occurred and the measures it had taken to avoid any repetition.

Both parties indicated that they were happy for the Tribunal to exercise its judgement on the level of compensation which was appropriate in these circumstances.

Reasons for Decision

This application was brought timeously in terms of regulation 9(2) of the 2011 Regulations.

Regulation 3 of the 2011 Regulations (which came into force on 7th March 2011) provides as follows:

- “(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.”

The Respondent as landlord was required to pay the deposit into an approved scheme. It accepted that it failed to do so.

Regulation 10 of the 2011 Regulations provides as follows:

- “If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal -
- (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 First-tier Tribunal 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.”

The Tribunal was satisfied that the Respondent did not comply with its duty under regulation 3, and accordingly it must order the Respondent to pay the Applicant an amount not exceeding three times the amount of the tenancy deposit.

In the case of *Jenson v Fappiano* 2015 G.W.D 4-89, Sheriff Welsh opined in relation to regulation 10 of the 2011 Regulations that there had to be a judicial assay of the nature of the non-compliance in the circumstances of the case and a value attached thereto which sounded in sanction, and that there should be a fair, proportionate and just sanction in the circumstances of the case. With that assessment the Tribunal respectfully agrees.

In the case of *Tenzin v Russell* 2015 Hous. L. R. 11, an Extra Division of the Inner House of the Court of Session confirmed that the amount of any award in respect of regulation 10(a) of the 2011 Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.

In determining what a fair, proportionate and just sanction in the circumstances of this application should be, the Tribunal took account of the facts that the Respondent is a large professional organisation, that it had not previously breached the 2011 Regulations, that its breach was caused by an unfortunate and unusual set of circumstances, that it had swiftly upon realising that the deposit had not been lodged in an approved scheme arranged to do so, that it accepted at the first opportunity before the Tribunal that it was at fault and had contravened Regulation 3 of the 2011 Regulations, and that the period during which the deposit was unprotected was relatively brief. The foregoing factors did represent mitigation in respect of the compensation to be awarded in the exercise of the Tribunal's judicial discretion.

However, balanced against these mitigating factors, was the fact that the Respondent received payment of the deposit on 25th March 2021 and did not comply with its legal obligations as a landlord with respect to the 2011 Regulations, which regulations have been enacted to provide protection to tenants in respect of their deposit and ensure that they can obtain repayment of their deposit at the conclusion of the lease.

Balancing these various competing factors in an effort to determine a fair, proportionate and just sanction in the circumstances of this application, the Tribunal considered that the sum of £500.00 was an appropriate sanction to impose.

Decision

For the foregoing reasons, the Tribunal ordered the Respondent in respect of its breach of Regulation 3 of the 2011 Regulations to make payment to the Applicant of the sum of £500.00 in terms of Regulation 10(a) of the 2011 Regulations.

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.


Neil Kinnear
Legal Member/Chair

25 October 2021
Date