



**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/22/3385

Re: Property at 24-1 Princes Street, Hawick, TD9 7AY ("the Property")

Parties:

Mr Daniel Bailey, 26-2 Trinity Street, Hawick, TD9 9NS ("the Applicant")

Mr Ian Harrison, 31 Richard James Avenue, Carlisle, CA1 2FD ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member)

Decision (in absence of the Respondent)

At the Case Management Discussion ("CMD") which took place by telephone conference on 28 February 2023 the Applicant was not in attendance but was represented by his step-father, Mr Nigel Benfield. The Respondent was neither present nor represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

Prior to the CMD the Tribunal had received from the Respondent letters dated 18 and 31 January 2023 with attachments. The Tribunal also received on behalf of the Applicant an email from Mr Benfield dated 25 January 2023.

Background

The Tribunal noted the following background:-

- The Respondent leased the Property to the Applicant from 10 May 2022.
- The heading of the lease signed by the parties refers to the tenancy as being an "Assured Shorthold Tenancy". In fact the tenancy was a Private Residential Tenancy Agreement ("the PRT") under the Private Housing (Tenancies)(Scotland) Act 2016.
- The PRT refers to "The DEPOSIT 360".

The Case Management Discussion

In addition to the application and the written representations of the parties, the Tribunal had regard to the following oral submissions from Mr Benfield for the Applicant:-

- i. The handwriting on the PRT is that of the Respondent.
- ii. The PRT was signed by the parties at the Property on 10 May 2022. Mr Benfield and his wife were also in attendance.
- iii. The rent was agreed to be £360 per month.
- iv. The PRT refers to a deposit of £360.
- v. Mr Benfield did not know what the redacted text on the PRT said. The redaction was there at the time of signing.
- vi. At the point of signing on 10 May 2022, £720 was paid to the Respondent in cash being the first month's rent of £360 and the deposit of £360. No receipt was given by the Respondent.
- vii. At the time Mr Benfield said to the Respondent that the deposit monies required to be paid into an approved scheme and the Respondent agreed but this was never done.
- viii. Rent was paid in each of June and July 2022 by bank transfer.
- ix. Due to the living conditions in the Property the PRT ended by mutual agreement on 10 August 2022.
- x. 5 days after the PRT ended contact was made with Safe Deposit Scotland and it was discovered that the funds had not been lodged. Checks were not made with the other two deposit schemes but the Respondent's representations in this application make it clear he did not lodge any funds in any scheme.
- xi. £360 has been repaid by the Respondent to the Applicant. This was paid to the Applicant in cash by a friend of the Respondent on 10 August 2022 in exchange for the keys to the Property being returned. That payment is being treated as a refund of the deposit.
- xii. When the PRT was ongoing the Respondent lived elsewhere. It is believed he may have another property in Carlisle.
- xiii. Since the PRT ended the Respondent has lived in a flat above the Property and he also owns another flat on the same floor as the Property.
- xiv. The Applicant is unaware of the Respondent's work situation.
- xv. The Applicant seeks a penalty be imposed on the Respondent in terms of The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations").

Findings in Fact

- i. The Respondent leased the Property to the Applicant from 10 May 2022.
- ii. The tenancy was a Private Residential Tenancy Agreement ("the PRT") under the Private Housing (Tenancies)(Scotland) Act 2016.
- iii. The PRT refers to "The DEPOSIT 360".
- iv. The handwriting on the PRT is that of the Respondent.
- v. The PRT was signed by the parties at the Property on 10 May 2022.
- vi. The rent was agreed to be £360 per month.
- vii. On 10 May 2022, £720 was paid to the Respondent in cash being the first month's rent of £360 and the deposit of £360 due in terms of the PRT. No receipt for that payment was given by the Respondent.
- viii. The PRT ended by mutual agreement on 10 August 2022.
- ix. The deposit of £360 was never paid by the Respondent into an approved scheme as required in terms of the Regulations.

- x. The deposit of £360 has been repaid by the Respondent to the Applicant.

Reasons for Decision

The Respondent did not attend the CMD. In his written representations to the Tribunal the Respondent maintained no deposit was paid by the Applicant. That position is at odds with the terms of the PRT. He said the tenancy was for a period of 6 months. That is also at odds with the terms of the PRT wherein the term is stated to be 12 months. The Respondent did not attend the CMD to explain his position and those contradictions. Other references by the parties to landlord registration issues and damage to the property are not relevant to the application.

The factual background therefore narrated by the Applicant within the application papers and on his behalf orally at the CMD was accepted by the Tribunal.

The Tribunal takes a landlord's failure to comply with the Regulations very seriously.

In terms of Regulation 10 of the Regulations it is stated:-

"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;"

In determining the amount payable by the Respondent to the Applicant the Tribunal took into account the following:-

- i. That the deposit was unprotected for 3 months.
- ii. That the Respondent refunded the deposit in full and did so on the date the tenancy ended.
- iii. That the Respondent's failure to comply with the Regulations is not excusable.

The Tribunal therefore determined that, having regard to the foregoing and in the absence of any other mitigating circumstances from the Respondent, the Respondent must pay to the Applicant a sum of £720 by way of a penalty for his failure to comply with the Regulations, two times the deposit. Such a penalty is proportionate, fair and just in the circumstances.

Decision

The Respondent is ordered to pay to the Applicant a sum of £720.

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.

G. Buchanan

Legal Member/Chair

V. Bremner

28 February 2023
Date