



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

Chamber Ref: FTS/HPC/PR/22/4144

Re: 64 Balnagowan Drive, Glenrothes, Fife, KY6 2SJ (“the Property”)

Parties

**Mr Owen Lawrie (Applicant)
Mr Iain McDonald (Respondent)**

Tribunal Member:

Alan Strain (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the sum of £475 to the Applicant

Background

This is an application under Regulation 9 of the Regulations and Rule 103 of ***The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Rules)*** in respect of (1) an alleged failure to protect a tenancy deposit; and (2) to provide information to the Applicant as required under Regulation 42 of the Regulations.

The Tribunal had regard to the following documents:

1. Application received 17 November 2022;
2. Tenancy Agreement (**TA**) commencing 19 September 2020;
3. Deposit Protection Schemes correspondence confirming deposit not protected;
4. Respondent’s Written Representations dated 6 January 2023 and 27 February 2023;
5. Tribunal Direction dated 10 February 2023;
6. CMD Note dated 10 February 2023.

Hearing

The Hearing proceeded by conference call.

The Applicant and Respondent participated and represented themselves.

The Tribunal heard from the Applicant. The Applicant's position was that the deposit of £475 was not protected for the entire duration of the tenancy (approximately 2 years), the Respondent had not sent the required information under the Regulations, the Respondent was not an inexperienced landlord as he let other Properties and the Applicant was not the first tenant in the Property. The Respondent had another tenant in the same building who had been there 13-15 years.

One of the Applicant's friends had been a tenant of the Respondent and his tenancy deposit had not been protected.

The Applicant had received return of his deposit under deduction of £55 at the end of the tenancy. The Applicant disputed £50 of the deduction which was for alleged rent arrears. He agreed the deduction of £5 for damage to the freezer drawer.

The Applicant sought the maximum award in light of the circumstances.

The Respondent's position was that he had not protected the tenancy deposit or provide the information required. He had been unaware of the requirement to protect the deposit until the termination of the tenancy at which point the Applicant brought this to his attention. The deposit had been returned in full at the end of the tenancy other than an agreed deduction of £55. This was in respect of damage to the freezer (£5) and rent arrears of (£50).

The Respondent stated he was not an experienced landlord and that his wife had dealt with the tenancy. He has been a Landlord and Registered with Fife Council for 14 years. The Applicant was not his first tenant. He bought 2 Properties in addition to this one in 2015. There are no deposits in respect of these Properties and this Property is occupied by himself. He was unaware of the change in legislation requiring the deposit to be protected. He updated his tenancy agreements on the 2 other Properties.

The Respondent accepted that the Applicant's friend's deposit had not been protected.

Decision and Reasons

The Tribunal considered the evidence before it and made the following findings in fact:

1. The Parties entered into the TA commencing 19 September 2020;
2. The Applicant paid a deposit of £475 on commencement which was not protected for the duration of the tenancy which ended on 23 August 2022;
3. The deposit was unprotected for a period of nearly 1 year 11 months;
4. The sum of £55 was deducted at the end of the tenancy with £50 of that deduction being in dispute;
5. The information required under Regulation 42 of the Regulations had not been provided to the Applicant by the Respondent;
6. The Respondent is an experienced landlord who let 2 other Properties in addition to this Property and the Applicant was not his first tenant.

7. The Respondent has taken remedial action by updating his tenancy agreements in respect of his other 2 Properties and does not hold any deposits in respect of them;
8. The Respondent's failure to protect the deposit and provide the required information under Regulation 42 was due to the fact he was unaware of the legal requirement to do so.

It was clear that the tenancy deposit had not been protected in breach of the regulations. It was equally clear the information required under Regulation 42 had not been provided in breach of the Regulations. Having made those findings it then fell to the Tribunal to determine what sanction should be made in respect of the breaches. In so doing the Tribunal considered, referred to and adopted the approach of the court in ***Russell-Smith and others v Uchegbu [2016] SC EDIN 64***. The Tribunal considered what was a fair, proportionate and just sanction in the circumstances of the case always having regard to the purpose of the Regulations and the gravity of the breach. Each case will depend upon its own facts and in the end of the day the exercise by the Tribunal of its discretion is a balancing exercise.

The Tribunal weighed all the factors and found it be of significance that the deposit was unprotected for 1 year 11 months; the Respondent was an experienced landlord who should have had knowledge of the requirement to protect the deposit and kept up to date with changes in his obligations as a landlord; due to the fact the deposit had not been protected the Respondent was in a preferential position to deduct the disputed sum of £50 in respect of rent arrears without having to go through an adjudication under the tenancy deposit protection scheme; the Respondent has taken remedial action by updating the tenancy agreements in his other Properties and does not hold any deposits.

In the circumstances the Tribunal considered the breach to be towards the lower end of the scale but that an award to be justified. The Tribunal considered the sum of £475 to be a fair, proportionate and just sanction in the circumstances of the case.

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.

A Strain

17 May 2023

Legal Member/Chair

Date

