



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

Chamber Ref: FTS/HPC/PR/22/4148

Re: Property at 1/2, 1399 Paisley Road West, Glasgow, G52 1ST ("the Property")

Parties:

Mrs Kim MacAulay, 3/1, 22 Gardner Street, Glasgow, G11 5NG ("the Applicant")

Mr Jasbinder Kooner, 60 Springboig Road, Glasgow, G32 0JU ("the Respondent")

Tribunal Members:

Andrew McLaughlin (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") orders the Respondent to pay the Applicant the sum of £1,500.00 with interest running on that sum at the rate of 5 per cent from today's date until payment.

Background

The Applicant seeks an award under the Regulations in that she contends that the Respondent has breached his duties under the Regulations in failing to register her deposit of £500.00 with an approved scheme within 30 working days of receipt.

The Case Management Discussion

The Application called for a Case Management Discussion (CMD) by conference call at 10 am on 1 March 2023. The Applicant and the Respondent were both personally

present. Neither party had any preliminary matters to raise and confirmed that they were ready to proceed.

The Tribunal discussed the substance of the Application with both parties. The facts of the situation were simple to understand. The Respondent had let the Property to the Applicant by virtue of a short-assured tenancy agreement that had commenced on 1 October 2014. The Applicant had paid a deposit of £500.00 to the Respondent. The Respondent had provided the Applicant with a written receipt for that sum but otherwise had not registered the deposit in any of the approved schemes as required by the Regulations. The Respondent then took steps to bring the tenancy agreement to an end by serving what appeared to be a document describing itself as a Notice to Leave and the Applicant left the Property on or around 30 November 2022. Shortly before serving the notice, the Respondent put the £500.00 in an approved scheme. The Applicant then received her £500.00 back from the deposit scheme around a week after the tenancy ended and without any dispute from the Respondent. The Applicant only became aware that the Respondent had breached Regulation 3 after the tenancy ended when she saw the date that the deposit had in fact been first registered with the approved scheme.

The Respondent admitted having breached Regulation 3 by failing to register the deposit with an approved scheme within 30 working days of receipt. He explained that he had instructed an agent to assist with ending the tenancy and that it had been explained to him that he needed to register the deposit. The description of the role of the agent was somewhat vague as this was not an ongoing relationship but appeared to be some ad-hoc support provided in a rather unorthodox manner by an unnamed "agent".

The Respondent explained that he primarily worked in retail but had *"diversified into property"* and had at one point owned four buy to let properties. The Respondent explained that they had sold off the properties when they realised that the market was regulated and the rules to be followed were too difficult and demanding and that he was now back focussing on retail. The Tribunal asked the Respondent whether he *"had not known about the deposit regulations or had known about them and forgotten."* The Respondent's answer was *"it was a bit of both"*. The Tribunal did not find that answer to be candid. Clearly the answer to the question could not be *"a bit of both"*.

The Applicant came across as emotional and in a degree of distress about the situation. It seemed to the Tribunal that she was primarily aggrieved about being asked to vacate the Property in the first place. She made reference to a *"betrayal"*.

It was clear that that the Applicant had only found out that her deposit had not been registered when the tenancy ended. She then received the money back without any issue almost straight away.

The Tribunal asked parties whether they would wish the opportunity of a having a Hearing assigned so that witnesses could be called or other evidence produced. Both parties said that they had nothing further to add or useful evidence that they could usefully produce. Both sides confirmed that they would prefer that the Tribunal made a decision today.

The Tribunal adjourned to consider matters and ended the CMD to reflect on matters and confirmed that a decision would be issued in writing in due course.

Having done so, the Tribunal made the following findings in fact.

Findings in Fact

- I. *The Applicant and the Respondent entered into a tenancy agreement whereby the Respondent let the Property to the Applicant on a short-assured tenancy which commenced on 1 October 2014;*
- II. *The Applicant paid the Respondent a cash deposit of £500.00;*
- III. *The Respondent failed to comply with Regulation 3 and did not register this deposit with an approved scheme within 30 working days of receipt;*
- IV. *The Respondent vacated the Property on or around 30 November 2022 after receiving a document purporting to be a “notice to leave” from the Respondent;*
- V. *Shortly before the Respondent sent this document, he registered the £500.00 deposit in an approved scheme;*
- VI. *The Applicant first became aware that the deposit had not been registered in an approved scheme after the tenancy ended and the process of returning the deposit to the Applicant began. The Applicant received the deposit of £500.00 back in full shortly after her tenancy ended;*
- VII. *The Applicant has suffered no discernible financial loss and negligible inconvenience as a result of the deposit not being properly registered;*
- VIII. *The Applicant remains extremely upset about having to have vacated the Property which is not relevant to the issue in this Application;*
- IX. *The Respondent operates a retail business and branched out into buy to let property ownership. The Respondent owned around 4 properties at one point and did not register any deposits received with any schemes;*

- X. *The Respondent failed to take any meaningful steps to educate himself about his legal responsibilities as a landlord;*
- XI. *The Respondent had the benefit of the Pursuer's £500.00 from around 30 November 2014 until November 2022. It is likely that the Respondent utilised this deposit and the other unregistered deposits held by him for financial gain;*
- XII. *The Respondent is not being honest or transparent about whether he did know about the Regulations and forgot to follow them or whether he never knew about them at all;*
- XIII. *By registering the deposit at the time he did, the Respondent exposed the Applicant to the risk of financial loss without the Applicant being any the wiser;*
- XIV. *It is likely that the Respondent hoped his breach of Regulation 3 might go unnoticed by the Applicant. In that regard the Respondent has acted with a degree of opportunism.*
- XV.
- XVI. *The Respondent had breached his obligations under Regulation 3 in this case and has acknowledged doing so in respect of other properties owned by him.*

Decision

Having made the above findings in fact the Tribunal considered what, if any, award should be made in respect of Regulation 10. The Tribunal considered the whole circumstances of the Application and considered that the Respondent's breach was flagrant and that he was not being candid about it. It was also systemic in that it was replicated in other properties owned by the Respondent. The Tribunal unanimously decided to order the Respondent to pay the Applicant the sum of £1,500.00 with interest running on that sum at the rate of 5 per cent from today's date until payment

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 McLaughlin

Legal Member/Chair

8 March 2023

Date