



**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/23/0467

Re: Property at Flat 11 80 James Watt Street, Glasgow, G2 8NF (“the Property”)

Parties:

Miss Sarah Louise Scott-Bennett, Miss Graye Broughton-Stuart, 2/2 7 Kennyhill Square, Glasgow, G31 3LL; 7 Kennyhill Square, Dennistoun, Glasgow, G31 3LL (“the Applicants”)

Miss Leila Benchiheub, 16 School House, Bridge of Weir, PA11 3NQ (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay to the Applicants the sum of £1500 having found that the Respondent has breached the duties set out in Regulations 3 and 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Background

1.This is an application under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and Rule 103 of the tribunal rules of procedure in respect of an alleged failure to comply with the duties required of a landlord under Regulation 3 of the 2011 Regulations.

2. The application was first lodged with the tribunal on 13th February 2023 and accepted by the tribunal on 28th March 2023. A case management discussion was initially set down for 25th May 2023 but was postponed to a later date at the request of

one of the parties. The case management discussion took place by teleconference on 30th June at 10am.

3. The Applicants attended the case management discussion on 30th June 2023 and were represented by Miss Broughton-Stuart. The Respondent also attended the case management discussion and represented herself.

4. The Tribunal had sight of the application, a tenancy agreement, a bank statement, an email from Safe Deposit Scotland, a protection certificate from My Deposits Scotland, an e-mail from the second Applicant regarding the property, an email thread between the second Applicant and the Respondent in January 2022, and in June 2023 the Applicants had lodged correspondence in relation to a planning application and marketing particulars for the property for rental after they had moved out. The Respondent had made written representations on 7th June regarding her position.

5. The Respondent had not had sight of the two documents lodged by the Applicants in June 2023, and these were sent to her by email at the start of the case management discussion. The Tribunal Legal Member raised the issue of whether these were relevant to the application and after discussion it was agreed on behalf of the Applicants that the planning document and the rental particulars need not be specifically referred to by them and requested that the Tribunal note that from the Applicants' perspective there had been ongoing issues with the tenancy which they had outlined in their written representations.

6. The Tribunal was advised that the first Applicant had been in a tenancy at the property with another person from 2020 and this had come to an end. The parties were agreed that Miss Broughton-Stuart and Miss Scott-Bennett had entered to a private residential tenancy at the property with effect from 31st January 2022 and that this had ended on 31st December 2022. The Tribunal did not have sight of this tenancy agreement, but the parties all had the same understanding of the position. The total deposit paid by the Applicants in relation to this tenancy was £790 and this was made up of a deposit of £395 from each of the two Applicants. Miss Scott-Bennett's share of the deposit had been paid at the start of her initial tenancy in 2020 but it was agreed that this had been carried forward into this tenancy.

7. The Tribunal Legal Member set out for the parties the duties which are required of a landlord in relation to the payment of a tenancy deposit in a tenancy of this type. For the Applicants Miss Broughton-Stuart indicated that they knew nothing of the whereabouts of the deposit they had paid until they were notified by one of the Deposit Schemes in the last couple of months of the tenancy. The Respondent accepted that she had breached the duties required of a landlord in relation to the tenancy and that she had not protected the deposit within the required timeframe, nor had she given the Applicants the information required in terms of the Regulations.

8. Given that the breach of duties on a landlord was admitted, the Applicants were first invited to make any representations they wished to make in relation to any sanction which the tribunal should impose on the Respondent. Miss Broughton-Stuart focussed on the length of time during which the deposit had not been protected. She explained that the deadline had been missed and the Applicants did not find out about the situation until they had received notification from one of the tenancy deposit schemes.

Miss Broughton-Stuart described this as a massive breach of standards and duties of a landlord. She said that this reflected on the landlord's ability to manage money and she considered that it would be remiss of the Applicants not to ask for the maximum sanction which the tribunal could impose. She referred to the fact that the Applicants had had ongoing issues during the tenancy. In addition, the Applicants had not yet recovered their deposit.

9. The Respondent Miss Benchiheub explained that she had been reading some information online regarding tenancy deposits and knew it was a thing that she had to deal with as landlord. She realised that she had overlooked the requirement to lodge the tenancy deposit and give information in relation to the Applicants' tenancy. She immediately lodged the deposit with My Deposits Scotland. She had done this with effect from 3rd of October 2022. She described what happened as her mistake and she sought to rely on her representations of 7th June 2023 in which she had accepted the breach. She apologised to the Applicants for her mistake. She said that at the time this was her only rented property. She now rented out a property other than this one and had an agency dealing with a tenancy in order to ensure that this did not happen again. She accepted it was not a matter for tenants to remind her to comply with the duties and that this was something she as a landlord should have done. As far as sanction was concerned, she indicated that the tribunal ought to impose a sanction that appeared fair in all the circumstances. She wished to confine her representations to what she had put in writing before the case management discussion.

10. Miss Benchiheub explained that at the end of the Applicants' tenancy she had logged into the tenancy deposit scheme portal and indicated that she was not making any claim on the deposit and that the full deposit of £790 could be released to the Applicants.

11. For the Applicants Miss Broughton-Stuart explained that the Applicants had not taken any steps to recover the deposit because they were unsure if that would affect their application to the tribunal. Miss Benchiheub indicated to them that she understood they should be able to claim back the full deposit paid by them from the deposit scheme provider but that if they encountered any difficulty in doing that that they should contact her.

12. The facts surrounding the duties on a landlord were not in dispute and the breach of the Regulations was accepted by the Respondent, and the tribunal was satisfied that it had sufficient information upon which to make a decision and then the proceedings had been fair.

Findings in Fact and Law

13. The Applicants entered into a private residential tenancy at the property with the Respondent with effect from 31st of January 2022.

14. The first Applicant had been a tenant at the property in terms of a previous tenancy agreement between the parties.

15. The Applicants paid a deposit of £790 in respect of the tenancy and the half share of this sum paid by the first Applicant was carried forward into the tenancy agreement which commenced on 31st of January 2022.

16. The tenancy is a relevant tenancy within the meaning of Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“ the 2011 Regulations “)

17. The deposit paid by the Applicants was not secured by or on behalf of the Respondent in any of the approved tenancy deposit schemes within 30 working days of the start of the tenancy on 31st January 2022 as required by the 2011 Regulations.

18. The information required to be given to the Applicants by the Respondent in terms of Regulations 3 and 42 of the 2011 Regulations was not given to them by or on the behalf of the Respondent during the first 30 working days of the tenancy which commenced on 31st January 2022.

19. The requirement to protect the deposit in an approved deposit scheme and to comply with the obligation to provide required information in terms of Regulations 3 and 42 of the 2011 regulations should have been complied with in respect of this tenancy within 30 working days of 31st January 2022.

20. The Respondent became aware that the deposit paid by the Applicants was not protected during the course of the tenancy and lodged this deposit within an approved scheme with effect from 3rd of October 2022.

21. The information required to be given to the Applicants by the Respondent together with confirmation that the deposit was protected was sent by the approved tenancy deposit scheme to the applicants shortly after 3rd of October 2022.

22. The tenancy between the parties ended on 31st of December 2022 and the Respondent logged into the deposit scheme provider to indicate that she had no claim on the deposit and that the full deposit could be released to the Applicants.

23. The Applicants have yet to contact the approved tenancy deposit scheme to obtain the return of their deposit.

24. The Respondent rented out only one property at the time of the Applicants’ tenancy but now rents out another property and has engaged an agent to deal with the tenancy to ensure that duties required of a landlord are not breached in the future.

Reasons for Decision

25. The tribunal having found that there was a breach of the 2011 Regulations (which in this application was admitted), it then fell to the tribunal to consider what sanction should be made in respect of the failure to protect the deposit and give the information required in terms of Regulations 3 and 42 of the 2011 Regulations within the required timeframe. The tribunal had regard to the case of ***Russell Smith and others against Uchegbu 2016 SC Edinburgh 64***. In particular the tribunal required to consider what was a fair, proportionate and just sanction in the circumstances of the application, always having regard to the purpose of the Regulations and the gravity of the breach.

Each case will depend on its own facts and at the end of the day the exercise by the tribunal of this judicial discretion is a balancing exercise.

26. The tribunal considered all of the information before it and found there were a number of factors to be weighed in the balance in this application. The first was that the deposit had been unprotected for a significant period of the tenancy under consideration, a period of around 7 months after the timeframe in which it should have been protected. The Respondent had advised the tribunal that she had ultimately protected the deposit paid by the Applicants albeit late, and at the end of the tenancy had noted on the deposit scheme portal that the full deposit was to be returned to the Applicants. At the time of the case management decision the Applicants had not taken steps to secure the deposit as they were not aware whether it would affect their application. In terms of the Tribunal's consideration of matters it appeared that the full deposit would be returned to the Applicants in the near future. It was clear from representations made by the Applicants that they had considered they had ongoing issues during the tenancy. The Respondent had confined her representations to an acceptance that due to an error on her part she had overlooked protecting the deposit and giving all of the appropriate information to the Respondents and she had apologised for this. She had now employed an agent to deal with her current rented property to ensure that such a breach does not happen again. Taking all these matters into account the tribunal did not consider that this was a breach which required a sanction of the maximum of three times the amount of the tenancy deposit paid but having regard to the fact that the Respondent had admitted the breach, apologised, and had ultimately protected the deposit and taken steps to avoid a repetition, a lesser sanction appeared appropriate. In all of the circumstances the tribunal imposed a sanction of £1500 on the Respondent.

Decision

The tribunal determined that the Respondent should pay to the Applicants the sum of £1500 having found that the Respondent breached the duties set out in Regulations 3 and 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 in respect of the tenancy of the property between the parties from 31st January to 31st December 2022.

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.

Valerie Bremner

30 June 2023

Legal Member/Chair

Date