



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

Chamber Ref: FTS/HPC/PR/23/0855

Re: Property at 23/7 Murieston Lane, Edinburgh, EH11 2LX (“the Property”)

Parties:

Ms Hyung Lin Kim, 10-9 Ballyong-ro, 17 Beon-gie, Buk-gu, Gwangju, South Korea (“the Applicant”)

Mr Chun Huang, 7 Davidson Park, Edinburgh, EH4 2PF (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it should make an order for payment for £300.00 in relation to the Tenancy Deposit Schemes (Scotland) Regulations 2011

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment of the deposit in relation to a tenancy for the Property.
2. The application contained,
 - a. Tenancy agreement
 - b. Messages showing the end of the tenancy.

- c. Deposit scheme correspondence showing the deposit was not in a scheme.
 - d. Letter from Living Rent to the landlord dated 30 January 2023.
- 3. The Applicant's representative Mr Tirelli attended the case management discussion. The respondent attended the case management discussion.
- 4. The respondent had submitted written representation on 9 May 2023 and the applicant had seen these and considered them.

The Discussion

- 5. The applicant's representative advised that they were seeking an order for payment for breach of the deposit regulations. He advised that the applicant had moved into the property in January 2022. She had paid a £900 deposit at that time. It was increased by another £60 in September 2022. It was then changed in December 2022 to £480.
- 6. On 17 December 2022 the applicant gave notice that she was leaving the property. She left it on 21 December 2022. She did not give 28 days' notice to leave. He advised the landlord did not say that she had to. She asked for her deposit back. She also asked that her rent from 21 December 2022 be repaid to her.
- 7. She had contacted the landlord around 5 January 2023 to ask for her deposit back, and the landlord had blocked her from WhatsApp. She had then contacted the student Living Rent organisation. Living Rent had written to the landlord on 30 January 2023 setting out that the landlord had breached the tenancy deposit regulations and asking for the repayment of the deposit £480 and £300 in compensation. The landlord had paid the £480 deposit back that day. He did not pay the compensation however. Living Rent sent a further reminder in February 2023 to the landlord. The applicant applied to the Tribunal on 16 March 2023.

8. The respondent paid the applicant £300 on 26 April 2023. (The tribunal application papers were served on the respondent on 19 April 2023.)
9. The applicant was seeking compensation for all of the trouble she had to go to get her deposit back. The applicant had to apply to the tribunal to get compensation for the breach. It was only after she had applied to the tribunal had the respondent paid her any compensation.
10. He advised that the applicant had read the respondent's submission. The applicant advised this was the first time she was aware that it had allegedly been a problem for the respondent regarding the condition of the tenancy and the different flatmates in the property. New tenants had come and gone, and the applicant had let the respondent know, and the respondent had been happy with the arrangements that the parties had in place. The respondent and the applicant had always communicated and agreed on any new tenant who had moved into the property.
11. The applicant noted that the amount of the deposit had changed over the course of her time there. She had paid £900 for the whole property in December 2021. Then a further £60 in September 2022. Then the landlord had asked her in December 2022 to use £480 of the deposit for December's rent and this left £480 as her deposit amount paid. The applicant confirmed that her deposit had been repaid to her.
12. The respondent confirmed that he had never placed the deposit into an approved deposit scheme. He advised that this was because there had been quite a lot of different flatmates in the property during 2022. He said there had been too many flatmates. He was also too busy at the time to put it into a scheme. He also did not know much about deposit schemes. He admitted that it was his fault the deposit was not lodged.
13. He advised that he had paid it back, £480 on 30 January 2023.

14. He advised that he had not paid the £300 compensation when requested because, he thought that this was requested as compensation for rent during the period 22 December 2022 until 8 January 2023. The applicant had asked for this to be repaid. The respondent advised that he was unhappy at this request as the applicant had not provided 28 days' notice for termination. He did not consider that she was due to be repaid that rent, and he was not therefore paying the compensation which he had thought was for that rent. Later on, he understood that the £300 compensation was in fact being sought as compensation for breach of the tenancy deposit regulations for not putting the deposit into a deposit scheme.
15. He admitted that he had blocked the applicant from WhatsApp as he was very angry with her for asking for her rent money back.
16. He advised that he had been a landlord at that property for a few years, but he could not remember how long. He advised that he rented out quite a few other properties. He did not say how many. In terms of the deposit scheme, he advised that he places deposits in the deposit scheme, but in this case he had forgotten to do it.
17. He advised that the applicant had failed to give him 28 days' notice of the end of the tenancy. He also advised that he had to pay for a deep clean of the applicant's room. The applicant's room had not been cleaned thoroughly. the applicant had just left and had not tried to find another tenant for the room. The respondent had been out of pocket with the applicant leaving without giving notice or finding another tenant. He had paid her the deposit back and he had paid her compensation.
18. The respondent said that when the applicant was still in Edinburgh she had not mentioned the deposit, and he assumed that she had given up on it as she owed rent for the notice period.

Findings in fact

19. The Tribunal made the following findings in fact:-

20. Chun Huang was the landlord.

21. Hyung Lin Kim was the tenant.

22. The property was 23/7 Murieston Lane, Edinburgh.

23. A tenancy commenced in around January 2022. It was a private residential tenancy. The applicant paid a total deposit of £960.00 to the respondent. £900 was paid on 30 December 2021.

24. A new tenancy commenced on 9 September 2022. There were two tenants. A deposit of £960 was payable for that tenancy. It was a private residential tenancy. A further £60 deposit was paid in around 9 September 2022 to the respondent. The respondent had retained the applicant's original deposit of £960 in September for use as the deposit in the new tenancy.

25. In December 2022 the respondent advised the applicant that he would use £480 of her deposit to pay for December's rent. The applicant agreed to this.

26. The applicant advised the respondent that she was terminating her tenancy on 21 December 2021.

27. The deposit was never secured in an approved tenancy deposit scheme.

28. The deposit was refunded on around 30 January 2023.

29. The application to the tribunal under rule 103 was dated 16 March 2023.

30. The respondent paid the applicant £300 in compensation on 26 April 2023.

Reasons for decision

31. The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits, and relevant to this case are the following regulations:-

32. *Duties in relation to tenancy deposits*

3.— (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.

Sanctions

9.— (1) *A tenant who has paid a tenancy deposit may apply to the [First-tier Tribunal] 1 for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit. (2) An application under paragraph (1) must be made [...]2 no later than 3 months after the tenancy has ended.*

If satisfied that the landlord did not comply with any duty in regulation 3 the [First-tier Tribunal] 1 — (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] 1 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.

33. The Respondent appeared at the case management discussion and submitted written representations. There is evidence of a deposit being paid in December 2021 for a tenancy which commenced in January 2022, and that deposit was then used for the new tenancy in September 2022. The respondent admitted that he had not placed the deposit into an approved tenancy deposit scheme for any of the tenancies he had with the applicant. Given these facts I find that

the deposit was not paid into an approved scheme in accordance with the terms of the regulations. Therefore, the terms of regulation 10 are engaged, and the tribunal must order that the Respondent pay the Applicant an amount not exceeding three times the amount of their tenancy deposit. The amount to be paid requires to be determined according to the circumstances of the case, the more serious the breach of the regulations the greater the penalty.

34. In considering what penalty to impose, I have had regard to the verbal and written submissions of both parties. On certain matters I did not find the respondent to be particularly credible or honest in his account of what had happened with this tenancy, however that said, he has engaged in this process and repaid the deposit and also already paid compensation to the applicant.

35. I considered first if the applicant was, in some way, personally barred from continuing with this application as she has accepted a sum of £300 in compensation for her claim. I did not consider that she was barred. I note that letters from Living Rent were sent to the respondent asking for compensation and her deposit back in January 2023 and then in February 2023. I note that the deposit was repaid after that first letter. I note that the compensation was then paid after the tribunal proceedings had been served on the respondent. I consider that had it not been for the applicant making this application to the tribunal she would not have received £300. While I note that Living Rent asked for £300 that was in January 2023, and the applicant's agent advised that this application was for all of the inconvenience she had suffered to date. I do not believe that the tribunal is barred from considering this application, although I will take into account in my assessment of the award of compensation that the applicant has received £300 from the respondent.

36. I then considered what sum the deposit is in this case. A new tenancy appears to have been entered into in September 2022. The deposit specified in that lease was for £960. It was the applicant who had paid that whole sum to the landlord, although I note it appears to have been a matter of agreement that £480 of that deposit had been used in December 2022 at the suggestion of the

respondent. It also appears to have been a matter of agreement that the applicant sought repayment of her deposit “of £480”.

37. “Tenancy deposit” is defined in the Housing (Scotland) Act 2006 at section 120 as:-

Tenancy deposits: preliminary

- (1) A tenancy deposit is a sum of money held as security for—
 - (a) the performance of any of the occupant's obligations arising under or in connection with a tenancy or an occupancy arrangement, or
 - (b) the discharge of any of the occupant's liabilities which so arise.
- (2) A tenancy deposit scheme is a scheme for safeguarding tenancy deposits paid in connection with the occupation of any living accommodation.

38. Given the terms of section 120, the September lease, the respondent's written statement (that he decided to only rent a room to the applicant and therefore reduced her tenancy to one room and her deposit to £480), and the fact that the applicant appears to have accepted that her deposit had reduced to £480.00, I consider in this case, that the deposit amount is £480.00. I also note that the applicant accepts that she has received repayment of her deposit of £480. I consider therefore in this case that the amount of the tenancy deposit to be used is £480.

39. Turning to what compensation I should award in this case. I take into account that the deposit has been repaid. Although I note that it was not repaid until Living Rent wrote to the respondent.

40. I also take into account that the tenancy in this application started in September 2023, and the deposit for that tenancy was not secured from September 2022

41. I consider it relevant that the landlord had previously not secured the deposit for the applicant's earlier tenancy at the property.
42. I also take into account that the respondent had blocked the applicant on WhatsApp from January 2023. I consider this was more likely to have been to avoid repaying the applicant's deposit to her.
43. I did not find the respondent to be completely credible in what he told the tribunal. He indicated that he was too busy to put the deposit into a scheme, however he received the deposit in December 2021, and he had over 12 months to put it in a scheme. He also advised that he did not put it in a scheme as there were so many other students in the property, however from January until at least December 2021 the deposit he had received was only from the applicant and he did not have any dealings with other tenants in terms of their deposits. He held no deposits from other tenants residing in the property. That explanation did not seem credible. He also advised that he did not have much knowledge of the deposit scheme, this also did not seem credible, particularly when considering that his written representations stated that he usually complies with the rules of putting a tenant's deposit into an approved scheme.
44. I place weight on the fact that the respondent advised that he had rented out the property for a number of years and he had other properties, so he appears to be a relatively experienced landlord. I found the respondent to be rather evasive in relation to the detail of either of those matters, and could not for example, tell me how many years he had let out the property.
45. I also note that the tenancy agreement he had used in September 2022 was an Assured Shorthold Agreement which was not a tenancy agreement which is used in Scotland (it is an English agreement).
46. The respondent advised that he was owed rent and had to carry out a deep clean of the applicant's room. I accept that the applicant had not given the respondent 28 days' notice before she left the tenancy. It may also have been the case that the room was not left in good condition, however, this is the point

of the tenancy deposit regulations and placing deposits into approved schemes, it provides protection to both parties. Had the deposit been lodged in a scheme the landlord could have sought to retain it to address these issues.

47. It appeared to me that the respondent had a rather informal approach to the tenancy deposit regulations and other legislation surrounding private residential letting. He is an experienced landlord. He would have been well aware of his duties to place a deposit in an approved scheme. He does not appear to have had any real intention of complying with the rules and placing the deposit into a scheme. He did not appear to have any intention of repaying the deposit until such time as he received formal correspondence from Living Rent requesting that he do so.

48. Given all of the factors set out above, I consider this breach to be fairly significant; and while I consider that the lease related to this deposit started in September 2022, the landlord had held the applicant's deposit monies unsecured for over 12 months on a haphazard leasing arrangement which does not comply with current rules, it was rather difficult to know what the terms of the actual lease in place are. I did not consider the respondent's explanations for acting in the way that he did to be reasonable. The landlord is an experienced landlord but appeared to have no interest in complying with the deposit regulations until he was threatened with formal action.

49. In mitigation for the respondent, I do note that the deposit was returned to the applicant with no deduction; and further he has paid her £300 in compensation. Also looking at the papers submitted it appeared to me that both parties were quite happy with the arrangement until the tenancy came to an end, and when it came to an end the applicant sought to leave giving no notice, and the respondent was left to tidy up any matters.

50. Weighing up the various factors, I consider that I should impose a penalty which recognises this is a fairly serious breach but also taking into account the mitigation. I consider that a penalty of £600, which is slightly over one times the

deposit amount, less the £300 already paid, would be appropriate. I award £300.00.

51. Decision

52. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that there had been a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011, and it would make an order for payment of £300.00 in favour of the Applicant.

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.

M Barbour

Legal Member/Chair

Date: 24 May 2023