



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under The Tenancy Deposit Schemes (Scotland) Regulations 2011 as amended by The Tenancy Deposit Schemes (Scotland) Amendment Regulations 2019. (“the Regulations”).

Chamber Ref: FTS/HPC/PR/23/0867

Re: Property at 4/7 Drumdryan Street, Edinburgh, EH39LA (“the Property”)

Parties:

Mrs Yunning Chen, 504-69 grove street, Edinburgh, EH38FD (“the Applicant”)

Mrs Lijun Liu, 6 Elder Grove, Leven, KY8 4FN (“the Respondent”)

Tribunal Member:

Martin McAllister (Legal Member)

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the sum of three thousand pounds (£3000) to the Applicant.**

Background

- 2. The Tribunal received an application from the Applicant dated 17th March 2023 seeking payment of a sum in compensation under regulation 10(a) of the Regulations. The date of the case management discussion was intimated to the Respondent. The Respondent submitted an email to the Tribunal on 11th April 2023.**

Case Management Discussion

- 3. A case management discussion was held by teleconference on 3rd May 2023. The Applicant was present and was assisted by Mrs Liangxin Zhang, interpreter. The Respondent was present and was assisted by Mr Quingzhong Liang, interpreter. The Legal Member explained the purpose of a case management discussion.**
- 4. The Tribunal had regard to the following documents:**

- i) Application dated 17th March 2023;
- ii) Private Residential Tenancy Agreement dated 28th April 2023;
- iii) Email from the Respondent dated 11th April 2023;
- iv) Email from SafeDeposits Scotland dated 11th April 2023 confirming that deposit held and would be paid in its entirety to the Applicant.

5. The Law

The Tenancy Deposit Schemes (Scotland) Regulations 2011

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.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

(a) in respect of which the landlord is a relevant person; and

(b) by virtue of which a house is occupied by an unconnected person,

unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

9. (1) A tenant who has paid a tenancy deposit may apply to the sheriff 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 by summary application and must be made no later than 3 months after the tenancy has ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—

(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 sheriff 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.

Findings in Fact

- 5.1 The Applicants and the Respondent were parties to a Private Residential Tenancy Agreement for the Property.**
- 5.2 The tenancy commenced on 17th July 2022 and came to an end on 16th March 2023.**
- 5.3 The Applicant paid a tenancy deposit of £1500 to the Respondent.**
- 5.4 The Respondent did not lodge the tenancy deposit with an approved tenancy deposit scheme until sometime on or around 11th April 2023.**
- 5.5 The tenancy deposit is to be repaid to the Applicant by SafeDeposits Scotland.**

Finding in Fact and Law

- 6. The tenancy deposit required to be paid to an approved tenancy deposit scheme by 26th August 2022 which was thirty working days from commencement of the tenancy.**

Reasons

- 7. Parties helpfully agreed that they entered into a private residential tenancy agreement for the Property with a commencement date of 17th July 2022 and that a tenancy deposit of £1500 was paid to the Respondent by the Applicant in advance of the commencement of the tenancy.**
- 8. The Respondent said that she had been unaware of the requirement to lodge the deposit with an approved scheme and that, when she had become aware, she had lodged the money with SafeDeposits Scotland and instructed them to pay the whole of the deposit to the Applicant.**
- 9. The Respondent could not remember when the funds were lodged with the approved tenancy deposit scheme but she agreed that it would be around 11th April 2023.**
- 10. The email of the Respondent to the Tribunal dated 11th April 2023 stated that she had made some critical mistakes due to inexperience as a landlord. The email stated that the mistakes caused loss because she did not lodge the funds in an approved tenancy deposit scheme and also failed to provide an inventory at the outset of the tenancy.**
- 11. The Respondent said that she had owned the Property since July 2021 and that there had been a tenant in the Property prior to the Applicant.**

She confirmed that she had taken a deposit from that tenant, had not lodged it with an approved scheme and had returned it to the tenant at the end of the tenancy.

12. The Respondent said that she owned two buy to let properties, including the Property, and that she was now aware of the requirements of the Regulations and would ensure that all deposits were properly dealt with in the future.

13. The Applicant said that it was her belief that the Respondent owned more than two properties which she rented out.

Determination of the Application

14. There was no dispute with regard to the essential facts of the application and there was no requirement for a Hearing to be fixed.

The Sanction

15. The creation of regulations to cover tenancy deposits was to protect tenants' funds and provide a structured process of dispute resolution. The Respondent received £1,500 as a tenancy deposit but did not lodge it with an approved deposit scheme within thirty working days of the beginning of the tenancy. It should have been lodged by 26th August 2022.

16. The Regulations are clear in stating that, where there is a breach such as this, the Tribunal must make an order requiring a Landlord to pay a Tenant a sum not exceeding three times the amount of the tenancy deposit. The amount is a matter of judicial discretion and must reflect what is a fair, proportionate and just sanction, having regard to the purpose of the Regulations and the gravity of the breach. It is a balancing act.

17. In this particular case, the Tribunal had regard to the fact that the deposit was unprotected the whole of the tenancy which lasted two hundred and forty two days.

18. The Tribunal had regard to and adopted the approach of the Court in Russell-Smith and Others v Uchegbu (2016) SC EDIN 64 where the Sheriff had effectively stated there to be two broad aspects to the sanction. The first was the period of time the deposit was unprotected and the second is a sum to reflect a weighting taking into account the particular circumstances of the case including the landlord's experience etc.

19. The deposit was unprotected for a period of two hundred and forty two days which was the whole of the tenancy. It is considered that the

appropriate sanction in respect of the period for which the deposit was unprotected should be £1500.

20. The Respondent is not an “accidental” landlord. Although the number of properties which she let out was disputed by the Applicant, the Respondent’s position was that she let out the Property and one other. She is in the business of letting properties and should have been aware of the responsibilities she had as a consequence of this.
21. The Tribunal accepted that the Respondent was now aware of the responsibilities which are incumbent on her in relation to tenancy deposits.
22. It was to the Respondent’s credit that she lodged the deposit with an approved tenancy deposit scheme and that she had requested that the whole sum be paid to the Applicant. However, this was after the tenancy had been terminated and after an application had been submitted to the Tribunal.
23. The Tribunal considered the failure by the Respondent to be somewhere between the lower and upper end of the end of the scale in respect of such matters. It determined that an appropriate sanction would be £1500.
24. The Tribunal determined to make an Order requiring the Respondent to pay the sum of £3000 to the Applicants.

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.

Martin J. McAllister, Legal Member
3rd May 2023