



**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/22/2310

Re: Property at 8B Baker Street, Stirling, Stirlingshire, FK8 1BJ (“the Property”)

Parties:

Mr Oladipupo Makinde, 5 Pendreich Way Room 4, Hermitage Road, Bridge of Allan, Stirling, FK9 4LA (“the Applicant”)

Mrs Glara Emily Ahdie, 13 Causewayhead Road, Stirling, FK9 5EG (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it should make an order for payment for £800.00 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. Email showing the end of the tenancy
 - c. Safe Deposits Scotland email showing late payment date.
 - d. Email correspondence between the parties around the time that the tenancy was coming to an end in April/May 2022.
3. The Applicant attended the case management discussion. The Respondent did not attend the case management discussion. There was a sheriff officer's certificate of service stating that the papers had been served on the respondent on the 8th day of August 2022. The respondent had also lodged written representations by email dated 18 August 2022. I was satisfied that the respondent had notice of the case management discussion and I was prepared to proceed in her absence.
4. The written representation submitted by the respondent stated that the deposit had been repaid to the applicant the week before, and there was attached paperwork from Safe Deposit Scotland confirming release of the deposit.

The Discussion

5. The applicant advised that he had moved into the property on 6 November 2021. He paid a deposit of £365 in October 2021. There was paperwork to support this payment. He advised that he was asked to pay the deposit when he moved in, there was no reference to the deposit in the tenancy agreement itself, although there is reference to a deposit which appears to correlate to the other tenant named on the tenancy agreement.
6. The applicant said he was supposed to have the flat for one year until November 2023. He advised he had spent much time out of the property, as he was studying in the library. He advised that there was decking outside of the house. Doors were left open at the flat. He had returned one day on 12 April 2021, and he was not allowed entry. The respondent claimed he had kept food in his room, and this had encouraged rats. Therefore the landlord refused to let

him return to his property. He had submitted correspondence to support this. He had managed to find other accommodation later in April 2021. He advised it had been stressful for him and close to his exams. He contacted the landlord and about getting his deposit and belongings back. He was advised that he had to come and clean the house first. He went to the property, cleaned it and returned the keys all on 26 April 2022.

7. He had asked on several occasions about getting his deposit returned. The first time that the landlord advised him where his deposit was by email on 12 May 2022, when she advised it was held by Safe Deposits Scotland. The applicant advised he had been emailing and calling the landlord about his deposit and he had no response from her. The landlord did not produce any information about the deposit scheme. After he moved out the deposit was not returned to him. He heard nothing about his deposit until he got the letter from Safe Deposit Scotland in 11 July 2022. He confirmed that the deposit has now been repaid to him.

8. He sought an order for the breach of the deposit regulations.

Findings in Fact and Law

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

10. The Respondent was the landlord.

11. The Applicant was a tenant.

12. The property was 8B Baker Street.

13. The tenancy commenced on 6 November 2021. It was a private residential tenancy.

14. The applicant paid a deposit of £365.00 to the respondent. It had been paid on 27 October 2021.

15. The tenancy ended on around 26 April 2022.
16. On 12 May 2022 the respondent advised the applicant by email that the deposit was registered with Safe Deposit Scotland.
17. The deposit was not secured in an approved tenancy deposit scheme until 16 May 2022.
18. The deposit was refunded on around 26 August 2022.
19. The application to the tribunal under rule 103 had been dated 12 July 2022.

Reasons for Decision

20. 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:-

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.

21. The Respondent did not appear at the case management discussion. There is evidence of a deposit being paid in October 2022 for a tenancy which commenced in November 2022; and there was an email from Safe Deposit Scotland to the applicant confirming that the deposit was secured with them on 16 May 2022. 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.

22. In this case, I consider that a sum of £800 would be appropriate.

23. In considering what penalty to impose, I have had regard to the verbal and written submissions of both parties. I found the applicant to be credible and honest in his account of what had happened with this tenancy. The respondent did not appear.

24. The circumstances concerning the termination of his property were rather concerning and the actions of the landlord relevant in how I will exercise my discretion. It appears that the respondent was locked out of his tenancy and not allowed back in except to collect his items, clean the flat and return the keys. There appears to have been at least a 14 day period when the applicant could not get his possessions. He appears to have been prevented from using his

tenancy during that period. His deposit was also not available to him or secured during that period. There is correspondence from the respondent which appears to set out reasons for apparently not allowing the applicant into his property and terminating his tenancy. I consider that the respondent's actions (for the purposes of this application only) do not appear to be those of a reasonable landlord dealing with issues relating to a tenant, including in relation to a deposit.

25. I note that the applicant had to attend at the flat, clean it and then return the keys before it appears that there was any response from the landlord about his deposit.

26. Further from the terms of the correspondence lodged the landlord appears that to have misled the Applicant on 12 May 2022 when she advised him that his deposit was held by Safe Deposit Scotland. It is clear that the deposit was not secured until 16 May 2022. There is also no explanation from the Respondent as to why the deposit was not released to the Applicant until August 2022.

27. In mitigation for the Respondent, I do note that the deposit was lodged with Safe Deposit Scotland, and it has been returned to the Applicant with no deduction.

28. Weighing up the various factors I consider that the actions of the landlord show a blatant disregard for the rights of the tenant and in terms of ensuring his deposit was protected, the only known mitigation being that the deposit was lodged and has been returned. I consider that I should therefore impose a penalty which recognises that the deposit was not secured for over 6 months; not repaid for 10 months; and the conduct of the landlord showed a disregard for the terms of the Tenancy Deposit Regulations, her duties as a landlord and the Applicant's rights as a tenant. I consider this breach serious, I consider that a penalty of less than three times monthly rent, but more than two months would be appropriate in this case.

Decision

29. 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 £800 in favour of the Applicant.

Observe

30. This application is confined to matters relating to the tenant’s deposit. I do note that however that the applicant states he was effectively locked out of his tenancy by the respondent with no notice given to him and his belongings withheld from him. He refers to being illegally evicted from his tenancy. While it is not my role to consider that question, it may be advisable for the applicant to seek legal on his rights in terms of the alleged unlawful termination of the tenancy.

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.

Melanie Barbour

Mrs Melanie Barbour
Legal Member/Chair

23rd September 2022
Date