



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/22/4135

Re: Flat 7, 15 Oakfield Avenue, Glasgow G12 8JF (“the Property”)

Parties:

Amandeep Kainth, Flat 7, 15 Oakfield Avenue, Glasgow G12 8JF (“Applicant”)

Christopher Hanlon and Helen Camille t/a Welcome Properties, 6 Brackenrigg Road, Glasgow (“Respondent”)

DAH Glasgow Ltd, 312 Duke Street, Glasgow G31 1QZ (“Respondent’s Representative”)

Tribunal Members:
Joan Devine (Legal Member)

Decision :
The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay to the Applicant the sum of £215.

Background

1. The Applicant made an application in Form G ("Application") dated 16 November 2022 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("Rules") stating that the Respondent had failed to timeously lodge a tenancy deposit in an appropriate scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("2011 Regulations"). The documents produced to the Tribunal by the Applicant were:
 - A private residential tenancy agreement (“PRT”) between the Applicant and the Respondent which commenced on 30 August 2022.
 - A copy of a payment instruction confirmation from Starling Bank showing a payment of £850 on 3 August 2022 to DAH Glasgow Ltd.

2. A copy of the Application and notification of a Case Management Discussion ("CMD") fixed for 21 February 2023 was given to the Respondent by Sheriff Officer on 23 December 2022. In advance of the CMD the Respondent's Representative lodged a written submission by email dated 4 January 2023 in which they stated that the deposit information had been registered on 14 September 2022 but the funds "somehow have never reached their account." They attached a deposit summary from SafeDeposits Scotland which related to the Applicant's tenancy of the Property and showed the amount protected as £0.00 and an email from SafeDeposits Scotland dated 14 September 2022 setting out account details for payment. The day before the CMD the Respondent's Representative provided information from SafeDeposits Scotland which indicated the deposit became protected on 4 January 2023. They also provided a mandate confirming their authority to act.

Case Management Discussion ("CMD")

3. A CMD took place on 21 February 2023 by conference call. The Applicant was in attendance. Initially there was no attendance by the Respondent's Representative. The Tribunal contacted the Respondent's Representative. The individual who was dealing with the application was not in the office. Her colleague, Joanne Argue joined the CMD and said she was content to proceed.
4. The Tribunal noted that a tenancy agreement had been entered into by the Parties which commenced on 30 August 2022 and a deposit of £850 had been paid on 3 August 2022. Both Parties confirmed this was agreed. The Tribunal asked if the tenancy was ongoing. The Applicant said it had ended at the end of December 2022. He said that he was notified that the deposit had become protected on 4 January 2023 and the deposit was returned to him shortly after that. Ms Argue confirmed this was agreed. The Tribunal noted the deposit was protected from 4 January 2023 and that the obligation on the Respondent is to protect the deposit within 30 working days of the start of the tenancy. The Tribunal calculated that to be by 11 October 2022. Parties confirmed this was agreed.
5. The Tribunal noted the terms of section 10 of the 2011 Regulations and said that as the salient facts were agreed, the only question for the Tribunal was the amount of the award to be made in terms of section 10. Parties confirmed that was agreed.
6. Ms Argue said that the system at the Respondent's Representative was that a deposit was logged and then passed to the banking team to pay the deposit to the scheme. She said that the system had worked for many years with no issues arising. She said that the Respondent's Representative only became aware that

the deposit was not protected in this case when the Respondent made them aware of this application and sent the paperwork to them on Christmas Eve. She said that her colleague had immediately accepted responsibility for not lodging the deposit and had apologised to the Applicant. She said that the Respondent's Representative use a system that connects to their banking system. She did not know why this did not flag that there was £850 that had not been assigned. She said that now a manual check is carried out to ensure the deposit is lodged and that this is intimated to the tenant.

7. The Applicant said that it was also a breach of the 2011 Regulations that he had not been sent the information required by section 42 of the 2011 Regulations. He said that if this had been sent to him it would have alerted the Respondent's Representative to the fact that the deposit had not been protected. Ms Argue said that the trigger to send out that information is the protection of the deposit which is why it did not happen in this case.
8. The Tribunal expressed the view that it had sufficient information to proceed to make a decision without the need for a further Hearing. The Parties stated that they were content for the Tribunal to make a decision on the basis of the information presented.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement which commenced on 30 August 2022.
2. The Applicant paid to the Respondent a deposit of £850 on or about 3 August 2022.
3. The deposit became protected by SafeDeposits Scotland on 4 January 2023.
4. The deposit was not paid to the administrator of an approved scheme in compliance with the timescales set out in Regulation 3 of the 2011 Regulations.
5. The deposit of £850 was paid into an approved scheme just over 3 months outwith the timescales stated in the 2011 Regulations.
6. The Respondent's Representative had a system in place to ensure deposits are protected timeously which failed in this instance.
7. On realising the deposit had not been protected the Respondent's Representative lodged the deposit with an approved scheme.

Reasons for the Decision

9. Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme administrator of an approved scheme within 30 working days of the beginning of the tenancy, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. The Tribunal was satisfied that the Respondent did not lodge the deposit in accordance with the timescales required by the 2011 Regulations. The deposit was lodged some 3 months late.

10. The amount to be awarded is a matter for the discretion of the Tribunal having regard to the factual matrix of the case before it. The Tribunal considered the comments of Sheriff Ross in *Rollett v Mackie* UTS/AP/19/0020. At para 13 and 14 he considered the assessment of the level of penalty and said:

"[13] In assessing the level of a penalty charge, the question is one of culpability, and the level of penalty requires to reflect the level of culpability. Examining the FtT's discussion of the facts, the first two features (purpose of Regulations; deprivation of protection) are present in every such case. The question is one of degree, and these two points cannot help on that question. The admission of failure tends to lessen fault: a denial would increase culpability. The diagnosis of cancer also tends to lessen culpability, as it affects intention. the finding that the breach was not intentional is therefore rational on the facts, and tends to lessen culpability.

[14] Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals. None of these aggravating factors is present."

11. The Tribunal noted that the Respondent's Representative admitted that there had been a breach and that they had, belatedly, placed the deposit in an approved scheme. The explanation given for the failure to comply with the 2011 Regulations was a breakdown in the Respondent's Representative's usual system for protecting deposits. The Tribunal accepted the explanation for non-compliance and was of the view that there were no aggravating factors present in this case of the sort described in *Rollett v Mackie*.
12. Having regard to factors put forward by both Parties the Tribunal determined that the sanction should be £215 in the particular facts and circumstances of this case. This figure is approximately 25% of the deposit.

Decision

The Tribunal granted an Order for payment of £215 in terms of Regulation 10(a) of the 2011 Regulations.

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.

**Joan Devine
Legal Member**

Date: 21 February 2023

