



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under the Tenancy Deposit Regulations 2011 (“The Regulations”) (Reference to a “Regulation” is with reference to The Regulations).

Chamber Ref: FTS/HPC/PR/21/1508

Re: Property at 65 Hogarth Avenue, Glasgow, G32 6NR (“the Property”)

Parties:

Miss Adele Gaffney, 17 Ross Drive, Airdrie, ML6 9TX (“the Applicant”)

Mrs Joanne Feeney, Navidale, Highholm Avenue, Port Glasgow, PA14 5PX (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:

Background

This matter called for a Hearing in respect of an Application for an order in terms of Regulation 10 where a landlord has not complied with their duty in respect of Regulation 3 to pay a deposit received under a tenancy into an approved scheme within 30 days of receipt.

A Case Management Discussion (CMD) took place on 23 September 2021. The Application was continued to a Hearing and Directions were made ordering the Respondent to lodge a written statement of any proposed defence to the Application. It was apparent at the CMD that it was not contested by the Respondent that they had breached Regulation 3 by failing to register the deposit paid to them by the Applicant. The Respondent simply wished the opportunity to address the Tribunal on any

mitigation and a Hearing was fixed to consider the Application and any mitigation in full.

The Hearing

The Application called for a Hearing by conference call at 10 am on 25 October 2021. The Applicant was present together with Mr Andrew Britton who the Applicant wished to represent her and who she also wished to call as a witness. The Applicant also had another witness, Mrs Tracey Lennon on standby to join the call when required.

The Respondent was not present but was represented by her husband, Mr Derek Feeney. Mr Feeney indicated that he would give evidence on behalf of the Respondent.

It was a feature of this case that each Representative wished not only to act as representative but also to give evidence as a witness. The Tribunal decided to allow this approach in order to keep matters progressing in a fair and efficient manner proportionate to the issues in dispute.

Preliminary matters.

The Tribunal began by considering preliminary matters. The Respondent had complied with the Direction made asking them to set out their position in writing. This was in essence a statement of what the Respondent considered to be mitigating factors which the Respondent wished the Tribunal to take into account.

The Applicant had then, two working days prior to today's hearing, lodged further written representations which also included some text messages. The Respondent confirmed he was not opposed to these documents being received and so the Tribunal allowed the further documentation to be considered. Both sides indicated that they were happy to proceed with the Hearing.

The Tribunal began by confirming what matters were agreed to ensure any evidence heard was relevant to the live issues in dispute.

It was agreed that:

1. The Respondent and the Applicant had entered into a tenancy in respect of the Property whereby the Respondent was the landlord and the Applicant was the tenant.
2. The tenancy commenced on 26 July 2019 and ended on 7 April 2021 when the Applicant left the Property.

3. The Applicant had paid a deposit of £700.00 in two equal part payments of £350.00 which were made on 6 September 2019 and 27 November 2019.
4. The Respondent had failed to comply with their duty to pay that deposit into an approved scheme as per Regulation 3.

It was agreed by all parties that the purpose of the Hearing was to determine what order the Tribunal should make as per Regulation 10 and in particular what amount the Respondent should be ordered to pay the Applicant consequent to the Respondent's breach of Regulation 3.

The Respondent's position as set out in their written defence appeared to draw the Tribunal's attention to alleged anti-social behaviour by the Applicant during the tenancy, the Respondent's own amateur status as a landlord and also allegations of the Applicant leaving the Property in a worse condition than when they moved in.

The Tribunal confirmed that it would not allow this Hearing to become a forensic examination into the condition of the Property at the time of the Applicant's departure.

The Tribunal heard evidence first from Mr Feeney as, given the admission that the Regulations had not been complied with, it seemed appropriate to begin to hear evidence from the Respondent first.

The Tribunal was surprised that the Respondent was not present and did not intend to give evidence herself. The Tribunal would have expected a Respondent in such a case to be personally present if the defence offered was that of mitigation. But nevertheless, the Tribunal began hearing from Mr Feeney who insisted that he wished to proceed with the Tribunal only hearing from himself on behalf of the Respondent.

All parties were afforded the right to cross examine each witness.

Mr Derek Feeney

Mr Derek Feeney is a smart-meter engineer who assists his wife with the administration of their rental properties. Mr Feeney and the Respondent have been managing these two properties for around seven years.

The Property had one tenant before the Applicant and there is another tenant now in the Property following on from the Applicant's departure. The Respondent herself is employed as a health play specialist at a children's hospital.

Mr Feeney pointed out that he and his wife were not professional landlords. Mr Feeney suggested that he and his wife had been doing the Applicant a favour by allowing the deposit to be paid in instalments after the move in date.

Mr Feeney stated that he had agreed with Mr Britton that £320.00 of the deposit would be returned at the end of the tenancy and that Mr Feeney would use £380.00 to buy a replacement carpet that was needed in the Property. Mr Feeney claimed that this had all been discussed and agreed.

The Tribunal questioned Mr Feeney closely regarding the Respondent's understanding of the law and what efforts she made to keep up to date with her responsibilities. The Tribunal pointed out to Mr Feeney, for example, that the tenancy the Respondent had used with the Applicant referred to itself as Short Assured Tenancy and made no reference to the Private Housing (Tenancies) Scotland Act 2016. This suggested a complete ignorance of sweeping legislative changes in the area of housing law.

Mr Feeney asserted that the payment of the deposit in instalments was the reason why the Respondent (and he) forgot to register the deposit. The Respondent thought they would defer lodgement until the full amount has been received. They then forgot to do so.

It was quickly apparent to the Tribunal that there were many inconsistencies in what Mr Feeney was saying in respect of his alleged mitigation.

Mr Feeney was asked directly by the Tribunal about whether he knew about the Regulations when the tenancy commenced. Mr Feeney answered *"I knew, but I' not sure about my wife."*

Later on though, when Mr Feeney was asked by Mr Britton about whether the previous tenant at the Property's deposit had been registered, Mr Feeney suggested that his wife had dealt with it and had been the one who had registered the deposit.

These positions were of course entirely inconsistent with each other.

Mr Britton put to Mr Feeney that he had in fact also retained the deposit of the previous tenant at the Property.

Mr Feeney stated that the previous tenant's deposit had been returned to her in full and advised that he had made the payment directly from his own account.

It was suggested to him that this meant that this deposit could not have been registered as payments to parties from registered deposit schemes are made directly by the scheme itself. Mr Feeney appeared to then act confused about what he or his wife might have done. This was a regular feature of Mr Feeney's evidence.

Mr Feeney also appeared to accept that there had been a meeting attended by the Applicant and Mr Britton together with the Respondent and Mr Feeney at the end of the

tenancy. Mr Feeney accepted that the Respondent, who is the landlord of the Property, advised the Applicant that there would be no difficulty her getting the deposit back.

Mr Feeney appeared though to suggest that his wife had been too timid to raise the necessary issues. Mr Feeney says that he then separately contacted Mr Britton a few days later about issues with the Property.

Mr Feeney stated that he then had a conversation with Mr Britton whereby they agreed that £320.00 would be returned to the Applicant and £380.00 retained by the Respondent to buy a carpet.

Even if Mr Feeney was being honest about the interactions of the parties at the end of the tenancy, it appeared a very strange way to do business. Mr Feeney appeared to think it was normal for the Respondent not to register the deposit, then promise it back to the Applicant before going back on this a few days later and attempting to retain £380.00.

The Tribunal formed an impression that Mr Feeney was saying at the time whatever he thought might be the cleverest thing to say rather than the truth.

The net effect of all this was that the Tribunal did not believe it was getting a truthful account of matters from Mr Feeney.

It was not for this Tribunal to make any finding about what may or may not have happened to the tenant previous to the Applicant's deposit, but what was clear to the Tribunal was that Mr Feeney's suggested grounds for mitigation could not safely be relied on as being credible or reliable.

Mr Feeney's evidence didn't make sense in parts and the Tribunal was left wondering if in fact it had been a deliberate tactic not to register the deposit. Mr Feeney also never mentioned what steps the Respondent had taken to educate herself about housing law developments to ensure that there was no reoccurrence.

Mr Feeney's attitude gave an impression to the Tribunal that he didn't consider the breach of the Regulations to be a particularly big deal.

Adele Gaffney

Adele Gaffney is a student social worker who lives with Andrew Britton and their young child.

Ms Gaffney confirmed the agreed facts regarding the Application and also spoke about her difficulties in getting her deposit back from the Respondent once they left the tenancy.

She spoke about a meeting she and Mr Britton had with the Respondent and Mr Feeney shortly before they left the Property. This meeting was to allow an inspection of the Property for the purposes of what should happen to the deposit.

Ms Gaffney described the meeting and how the Respondent told her that there would be no issues with her getting her deposit back. Following on from this meeting, she confirmed that it was really Mr Britton who then had ongoing contact with Mr Feeney about the deposit. Ms Gaffney did describe though the effect not having her deposit returned to her had on her. She described how they had been counting on having that money back which was needed for their own house purchase. Not having her deposit back caused unexpected financial difficulties, although £320.00 was returned to her around the time of ending the tenancy. The remainder was apparently retained by the Respondent for a replacement carpet.

The Applicant's evidence appeared credible and reliable to the Tribunal. She gave evidence in a natural manner with no inconsistencies. Nothing she said gave the Tribunal cause to doubt her honesty.

The Tribunal then heard from Andrew Britton.

Andrew Britton.

Andrew Britton is an electrical design engineer who was present in the Property for much of the tenancy on account of his relationship with the Applicant.

Mr Britton confirmed that he was at the meeting in the Property about the deposit and confirmed that both Mr and Mrs Feeney had agreed to fully return the Applicant's deposit. He then referred to Mr Feeney getting in touch and raising an issue about a replacement carpet. Mr Britton stated that he had asked Mr Feeney to get a quote for the carpet to see how much it might cost. He stated though that on no account did he agree that Mr Feeney could retain £380.00 and simply then attribute that to the Applicant's remaining deposit.

The Tribunal considered that Mr Britton's evidence was credible and reliable. What he said made sense and fitted in logically with what the Tribunal had already heard. The Tribunal had no reason to suggest that Mr Britton was not being anything other than honest.

Mr Feeney was afforded the right to question Mr Britton but cross-examination of the witness did not appear to yield any concessions or raise anything which gave the Tribunal pause to reconsider its views of Mr Britton's evidence.

The Applicant wished the Tribunal to hear from one final witness, who was Mrs Tracey Lennon.

Tracey Lennon

Mrs Tracey Lennon is Mr Britton's mother and is employed as tenant participation officer for North Lanarkshire Council.

Mrs Lennon spoke to assisting the Applicant with cleaning up the Property at the end of the tenancy and commented that at no point had Mr or Mrs Feeney raised any concerns with her about the condition of the Property.

Mrs Lennon's evidence was in short compass and whilst she was asked questions by Mr Feeney, the Tribunal considered her evidence to be both credible and reliable albeit of limited relevance to consideration of the issues in dispute.

Findings in Fact

Having heard the above evidence, the Tribunal made the following findings in fact;

- I. *The Respondent and the Applicant entered into a tenancy in respect of the Property whereby the Respondent was the landlord and the Applicant was the tenant;*
- II. *The tenancy commenced on 26 July 2019 and ended on 7 April 2021 when the Applicant left the Property;*
- III. *The Applicant paid a deposit of £700.00 in two part payments of £350.00 which were made on 6 September 2019 and 27 November 2019;*
- IV. *The Respondent failed to comply with their duty to pay that deposit into an approved scheme as per Regulation 3;*
- V. *The Applicant timeously raised this Application within three months of the end of the tenancy;*
- VI. *The Respondent's explanations as to why exactly the deposit was not registered are unsatisfactory;*
- VII. *The Respondent does not appear to consider that the Regulations are particularly important;*

VIII. *There is no good reason as to why the Respondent failed to register the deposit and the Respondent has failed to set out satisfactory reasons that might mitigate or justify this breach.*

Decision

Having made the above findings in fact, the Tribunal conducted a judicial exercise of assessing what amount of compensation the Tribunal should order the Respondent to pay to the Applicant.

Having carefully considered the facts of the case and having heard evidence from witnesses, the Tribunal concludes that the mitigation offered by Mr Feeney cannot be relied upon as being truthful or relevant.

The Tribunal considers that an award should be made at the upper end of the scale available to the Tribunal under the terms of Regulation 10.

Accordingly, the Tribunal orders the Respondent to pay to the Applicant a sum equal to three times the deposit received, meaning a total sum of £2,100.00 is awarded.

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.

Andrew McLaughlin

25th October 2021

Legal Member/Chair

Date