



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under the Tenancy Deposit Schemes
(Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/21/2215

Re: Property at Flat 0/1, 18 Naburn Gate, Glasgow, G5 0SQ (“the Property”)

Parties:

**Addington Formwork Limited, Kiln Lane, Easthampstead Road, Bracknell, RG12
1NA (“the Applicant”)**

**Shoukat Ali Khan, 5 Woodyet Road Clarkston Glasgow G76 8SA and City
Centre Lets Limited, 71-75 Shelton Street, London, WC2H 9JQ (“the
Respondent(s)”)**

Tribunal Members:

Richard Mill (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an Order for Payment be made against the
Respondents in the sum of Six Thousand Pounds Sterling (£6,000)**

Introduction

This is an application under Rule 103 and Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Service of the application and intimation of the Case Management Discussion (CMD) was effected upon the respondents by I J Beim & Associates, Process Servers on 7 October 2021 at the premises of the second respondent City Centre Lets, who is also the agent for the first respondent.

The CMD took place by teleconference on 10 November 2021 at 2.00 pm.

The applicant was represented by Mrs Julie MacDonald of the applicant company. The respondents failed to participate in the teleconference hearing.

Findings and Reasons

The relevant property is Flat 0/1, 18 Naburn Gate, Glasgow G5 0SQ.

A tenancy agreement in respect of the property commenced on 26 January 2020. A written agreement was entered into which was entitled "Short Assured Tenancy Agreement". This purported to be a tenancy within the meaning of Section 32 of the Housing (Scotland) Act 1988. This was not lawful. Short assured tenancies could not be created from 1 December 2017.

The tenancy agreement was entered into between the landlord, named to be City Centre Lets and the tenant who is identified as Addington (Formwork) Ltd. The owner of the property is not disclosed within the written tenancy agreement, but the title information held in the Land Register of Scotland under reference GLA142152 discloses that the heritable proprietor is Mr Shoukat Ali Khan. The Tribunal concluded and found that City Centre Lets had the authority to act on behalf of and legally bind Mr Khan as an undisclosed principal.

Mrs MacDonald submitted that the property was occupied as a residential let. The company of Addington (Formwork) Ltd rented the property for members of staff to live in whilst they were working on a site in Clyde Street, Glasgow. The staff members used the property as their sole accommodation. The premises were not used for any business related purposes. The Tribunal was satisfied that the fact that the applicant former tenant is a limited company does not prevent the property having been occupied as a residential property. The Tribunal was satisfied that these arrangements between the parties qualified as a private residential tenancy under section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.

The minimum notice period under the 2016 Act to be given to terminate a tenancy is one of 28 days. Though the purported short assured tenancy agreement was not legal, the applicant followed the expected notice period referred to therein and provided 2 months' notice to bring the tenancy to an end on 26 July 2021. The Tribunal was satisfied on the basis of the unchallenged evidence of the applicant that the tenancy did end on 26 July 2021.

Applications under Rule 103 made to the Tribunal have a strict time bar of 3 months from the termination of the date of the tenancy. The application made to the Tribunal is dated 7 September 2021 and was received on 10 September 2021, within the 3 month period. The Tribunal was satisfied that the application has been validly made.

In the written application the applicant seeks repayment of the full deposit paid in respect of the property which was one of £2,000 and the overpayment of rent. Earlier in the process the Tribunal administration made clear to the applicant that the current process does not entitle the Tribunal to make an order requiring the landlord to repay

the deposit. This application was made under Rule 103 and is solely focused upon whether or not the landlord has complied with the 2011 Regulations, and whether or not any penalty should be imposed as a consequence thereof. It is known that a further application has now been made which seeks to recover the deposit.

The Tribunal was satisfied on the basis of the unchallenged evidence that the sum of £2,000 was paid by the applicant as a tenancy deposit.

The applicant has made numerous requests to the respondent to seek clarification regarding the repayment of the tenancy deposit paid, as well as seeking clarification regarding the Tenancy Deposit Scheme and where the deposit was lodged. No information at all has subsequently forthcoming from the landlord.

The applicant must satisfy the Tribunal by the production of sufficient documentary evidence that the deposit is not held by any one of the three Tenancy Deposit Schemes operating in Scotland which are SafeDeposits Scotland, Mydeposits Scotland or Letting Protection Service Scotland. The applicant relied upon written documentation from the three Tenancy Deposit Schemes operating in Scotland. A log of an online chat on 10 August 2021 with Mydeposits Scotland discloses that the deposit was not held by that scheme. Email exchanges on 4 October 2021 with SafeDeposits Scotland discloses that the deposit was not held with that scheme. Email enquiries with the Letting Protection Service Scotland on 10 April 2021 disclosed that the deposit was not held with that scheme. The Tribunal attached weight to these items of documentary evidence which were all found to be credible and reliable.

The Tribunal was satisfied that the landlord has not complied with the requirements of the 2007 Regulations and in particular has not lodged the deposit paid to an approved scheme. The duties of landlords are contained within Regulation 3. This requires the landlord who has received the tenancy deposit in connection with the relevant tenancy to pay the deposit to a relevant scheme administrator from an approved scheme within 30 working days of the beginning of the tenancy. The respondent failed to do this.

The Tribunal was satisfied that the respondent failed to comply with the duty in Regulation 3. Regulation 10 requires the Tribunal to make an Order against the respondent to pay to the applicant an amount not exceeding three times the amount of the tenancy deposit.

The Tribunal considered all relevant circumstances prior to making any Order under Regulation 10. Mr Khan is operating in an undisclosed manner as if a commercial letting agent and yet neither he nor City Centre Lets appear to have any experience or knowledge of residential lettings given that an attempt was made to enter into short assured tenancy over 2 years after such tenancies were no longer valid. The Tribunal is also satisfied having regard to the entirety of the documentary and oral evidence that the respondents have failed to act diligently and professionally and failed to account to the applicant in a proper manner. They have failed to participate in the

these proceedings. There are no known mitigating factors and, in the circumstances, the Tribunal ordered that the respondents pay to the applicant the maximum amount being the sum of three times the amount of the tenancy deposit ie a total of £6,000. This is fair and proportionate in all of the circumstances. The public require to have confidence that residential landlords are operating fairly and that their deposits are secured in accordance with the law in force in Scotland. This is especially so where the landlord seeks to operate as a bona fide commercial landlord.

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.

Richard Mill

10 November 2021

Legal Member/Chair _____

Date _____