



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/20/2301

Re: Property at 358A Brook Street, Broughty Ferry, Dundee, DD5 2AN (“the Property”)

Parties:

Miss Cheryl Stewart, 33 Strathbeg Place, Broughty Ferry, Dundee, DD5 3HQ (“the Applicant”)

Mrs Anne Bain, The Stackyard House, Flocklones, Invergowrie, By Dundee, DD2 5LE (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision

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

Background

This is an application dated 1st October 2020 brought in terms of Rule 103 (Application for order for payment where landlord has not paid the deposit into an approved scheme) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended. The application is made under Regulation 9 of the *Tenancy Deposit Schemes (Scotland) Regulations 2011* (“the 2011 Regulations”).

The Applicant seeks payment of compensation in respect of an alleged failure by the Respondent to pay the deposit she asserts she provided of £650.00 in relation to the tenancy agreement into an approved scheme within 30 days of receipt of that sum.

The Applicant provided with her application copies of a private residential tenancy agreement, e-mail from SafeDeposits Scotland, bank statement, and various correspondence and photographs.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 20th November 2020, and the Tribunal was provided with the execution of service.

Case Management Discussion

A Case Management Discussion was held at 14.00 on 6th January 2021 by Tele-Conference. The Applicant participated, and was not represented. The Respondent participated, and was represented by her son, Russell Bain.

The Applicant explained that she had paid the deposit of £650.00 to the Respondent on 19th August 2019. The tenancy commenced on 1st September 2019. The Respondent left the tenancy on 8th October 2020.

The Applicant stated that the deposit had been paid into an approved scheme, but that it had not been paid until 27th November 2019, which was outwith the 30 day period allowed by the 2011 Regulations, and sought compensation.

Mr Bain readily accepted that the deposit had been received by the Respondent, had not been paid into the approved scheme until 27th November 2019, and that the Respondent was accordingly in breach of the 2011 Regulations.

Mr Bain explained that his father, the Respondent's husband, had passed away at the end of August 2019. The Respondent, and indeed her whole family, had quite understandably been preoccupied and upset by the bereavement, and as a result the deposit had not been paid into the approved scheme through oversight caused by these circumstances.

It was when Mr Bain and his brother were subsequently dealing with their father's affairs and the financial paperwork of both his parents, that they realised that the deposit had been paid but not placed in an approved scheme, and as soon as they realised this, they arranged for the deposit to be paid in to the scheme.

At the conclusion of the tenancy, the deposit had been repaid in full to the Applicant. The Respondent owned three premises in the same building, of which the Property was one, and she had leased these out over a number of years as a source of extra income. It was not her main source of income nor did she lease out Property on a professional basis.

The period of time when the deposit was unprotected was relatively brief, and the Applicant had suffered no detriment as a result. The Respondent was now in the process of selling the three properties.

The Applicant had a number of complaints about lack of contact with the landlord during the tenancy, and with the condition of the Property, but did not seek to

challenge the account given by Mr Bain, save that she believed that another tenant of the Respondent had previously found that her deposit had been paid into an approved scheme late.

Reasons for Decision

This application was brought timeously in terms of regulation 9(2) of the 2011 Regulations.

Regulation 3 of the 2011 Regulations (which came into force on 7th March 2011) provides as follows:

“(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.”

The Respondent as landlord was required to pay the deposit into an approved scheme within 30 working days of the beginning of the tenancy. She accepted that she failed to do so.

Regulation 10 of the 2011 Regulations provides as follows:

“If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal -

- (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 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.”

The Tribunal is satisfied that the Respondent did not comply with her duty under regulation 3, and accordingly it must order the Respondent to pay the Applicant an amount not exceeding three times the amount of the tenancy deposit.

In the case of *Jenson v Fappiano* 2015 G.W.D 4-89, Sheriff Welsh opined in relation to regulation 10 of the 2011 Regulations that there had to be a judicial assay of the nature of the non-compliance in the circumstances of the case and a value attached thereto which sounded in sanction, and that there should be a fair, proportionate and just sanction in the circumstances of the case. With that assessment the Tribunal respectfully agrees.

In the case of *Tenzin v Russell* 2015 Hous. L. R. 11, an Extra Division of the Inner House of the Court of Session confirmed that the amount of any award in respect of regulation 10(a) of the 2011 Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.

In determining what a fair, proportionate and just sanction in the circumstances of this application should be, the Tribunal took account of the facts that the Respondent had no specialised knowledge of housing law or regulations, that she did not engage in the letting of property on a commercial basis, that she had paid the deposit into an approved scheme albeit several weeks later than she ought to have, that she accepted at the first opportunity before the Tribunal that she was at fault and had contravened Regulation 3 of the 2011 Regulations, that her omission to pay the deposit into an approved scheme timeously was caused by oversight as a result of the supervening death of her husband, and that the period in which the deposit was unprotected was relatively short.

In these circumstances, the Tribunal considers that the foregoing factors do represent mitigation in respect of the sum to be awarded in the exercise of its judicial discretion.

However, balanced against these mitigating factors, are the fact that the Respondent received payment of the deposit and did not comply with her legal obligations as a landlord with respect to the 2011 Regulations, which regulations have been enacted to provide protection to tenants in respect of their deposit and ensure that they can obtain repayment of their deposit at the conclusion of the lease.

Balancing these various competing factors in an effort to determine a fair, proportionate and just sanction in the circumstances of this application, the Tribunal considers that the sum of £500.00 is an appropriate sanction to impose.

Decision

For the foregoing reasons, the Tribunal orders the Respondent in respect of her breach of Regulation 3 of the 2011 Regulations to make payment to the Applicant of the sum of £500.00 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.

Neil Kinnear
Legal Member/Chair

6 January 2021
Date