



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/PR/20/0039

Re: Property at Flat 3C Ferryhill Gardens, Aberdeen, AB11 6WF (“the Property”)

Parties:

Miss Chloe Young, 70 Lee Crescent North, Bridge of Weir, Aberdeen, AB22 8FP (“the Applicant”)

Mr Mark McInnes, 2 Ellerslie Road, Bucksburn, AB21 9EJ (“the Respondent”)

Tribunal Member:

Ms. Susanne L. M. Tanner Q.C., Legal Member and Chair

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that an order must be made in terms of Regulation 10 of the 2011 Regulations requiring the Respondent to pay to the Applicants the sum of NINE HUNDRED AND SEVENTY FIVE POUNDS (£975.00) Sterling

1. Procedural background

1.1. On 5 January 2020, the Applicant made an application (“the Application”) to the tribunal.

- 1.2. The Application is made in terms of Rule 103 of the 2017 Rules, namely an application for an order for payment where the landlord (Respondent) has failed to carry out duties in relation to tenancy deposits.
- 1.3. The Applicant attached to the Application:
 - 1.3.1. A signing page of a document (said to be the tenancy agreement)
 - 1.3.2. A copy email from Applicant to Respondent in relation to the end of the tenancy.
- 1.4. On 9 January 2020, the Application was considered by a legal member acting under the delegated powers of the President and further information was requested from the Applicant, namely an address for the Respondent. On 10 January 2020 the Applicant provided an address for the Respondent.
- 1.5. The tribunal's administration confirmed that the Respondent is registered with Landlord Registration Scotland as the landlord of the Property.
- 1.6. On 23 January 2020, the Application was considered by a legal member acting under the delegated powers of the President and further information was requested from the Applicant, namely:
 - 1.6.1. A copy of the full tenancy agreement, as only the signing page had been sent with the Application;
 - 1.6.2. And notification that if the Applicant wished to seek return of her deposit as well as a penalty for failure to lodge the tenancy deposit in terms of Rule 103, she would require to lodge an additional application.
- 1.7. On 2 March 2020, the Applicant provided a signed copy of a Short Assured Tenancy Agreement between the Respondent and the Applicant and another tenant, dated 18 July 2017.
- 1.8. 11 March 2020, the Application was accepted for determination by the tribunal.
- 1.9. On 11 March 2020, the tribunal issued Directions requiring the Applicant to provide email confirmation from the three tenancy deposit protection schemes in Scotland that the tenancy deposit is not protected by them.
- 1.10. On 18 March 2020, the Applicant provided copy emails from all three schemes showing that the tenancy deposit for the Applicant and the Property had not been registered with them.

- 1.11. On 12 March 2020, the Application was accepted for determination. On 23 March 2020, the tribunal informed the Applicant that due to the Covid-19 pandemic the tribunal was not in a position to fix a Case Management Discussion at that time.
- 1.12. On 2 July 2020, the tribunal notified the parties that the Application had been referred to the tribunal and that a Case Management Discussion (“CMD”) teleconference had been fixed for 7 August 2020 at 14.00 which both parties were required to attend. Parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application. Parties were advised that if they did not attend the CMD, this would not stop a decision or order from being made by the tribunal if the tribunal considered that it has sufficient information before it to do so and the procedure has been fair. The Respondent was invited to submit any written representations he wished by 23 July 2020. The Application paperwork and notification of the hearing was served on the Respondent by Sheriff Officers on 3 July 2020.
- 1.13. The Respondent submitted written representations and copy email correspondence between him and the Applicant. The Respondent confirmed that he had failed to lodge the Applicant’s deposit in a tenancy deposit protection scheme, stating that it was due to an oversight and that it is now done for his current tenants. The Respondent stated that he had not returned the Applicant’s deposit to her and her flatmate at the end of the tenancy. Submissions were made in relation to damage and deductions from the Applicant’s deposit which were not relevant to the Application under rule 103. The Respondent also complained that a “letter before action” had not been sent to him. He challenged the amount of money requested by way of compensation. The emails attached to his submissions contained discussion about the end of the tenancy and proposed deductions from the deposit. Only one email related to the issue of deposit protection, which was an email from the Applicant dated 20 November 2019 at 12.14pm in which the Applicant asked the Respondent if the deposit was in Safe Deposits Scotland. In the emails which follow in the chain there was no response to this question from the Respondent.
- 1.14. The Respondent has not stated whether the deposit has been now lodged with a deposit protection company since the email from the Applicant was sent on 20 November 2019 or following receipt of the Application documentation.

2. Case Management Discussion (“CMD”) – 7 August 2020 at 1400h – by teleconference

2.1. The Applicant attended the teleconference.

2.2. The Respondent attended the teleconference.

2.3. The tribunal chair explained the nature and purpose of the CMD and made reference to the Directions previously issued by the tribunal.

2.4. The Respondent’s submissions

2.5. The Respondent accepted that the deposit was not lodged in a deposit protection scheme at any time and apologised for this, stating that it was an oversight on his part.

2.6. He stated that he was aware that there was a statutory duty at the time that he received the deposit from the letting agent who had collected it from the tenant. He stated that his previous tenants’ deposits were protected and subsequent deposits were protected. He stated that this one had been missed. He stated that it was originally his property and that he has rented it out since he left Aberdeen in 2012. He stated that the property is rented out at present and that it runs at a loss in terms of the mortgage and other payments which have to be paid as compared to the rent received.

2.7. In relation to the Applicant’s deposit he stated that there was an oversight on his part. He was living in Germany at the time. He has lived there from 2016. He was seeking medical treatment for a condition. He does not make any income in the United Kingdom.

2.8. He stated that he wished to point out that it was a joint tenancy and the Applicant is claiming the full amount of the deposit. He accepted that it is a joint and several tenancy agreement and that there is one deposit.

2.9. He stated that the other tenant had agreed to half of the deposit being retained at the end of the tenancy.

2.10. He stated that the money was being held in his bank account from the time that the letting agent paid it to him. He stated that it is the same account which the rent and the mortgage comes out of. He stated that the letting agent took the deposit from the client. They took 50% of the deposit as payment for

their services. It was deducted from the deposit. There was no agreement that the letting agent would lodge the money in a deposit protection scheme.

- 2.11. He stated that he did not think about lodging the deposit at any time between July 2017 and the email from the tenant in November 2019, as he thought that he had done it.
- 2.12. He stated that he only realised at the end of the tenancy. In relation to the tenant's enquiry on 20 November 2019, he stated that he was not aware of where he had saved it at that time which is why he did not reply and say that it was not lodged. When asked by the chair about which deposit scheme he used, he stated that he was living in Germany and using his phone and did not have access to the paperwork. The chair asked whether he accessed the scheme via the internet. He accepted that he did. He stated that he uses Safe Deposit Scotland and deals with tenancy deposits through the online portal. He accepted that that is accessible from Germany.
- 2.13. He stated that he has not contacted Safe Deposits Scotland to see whether he can lodge it now in order that the dispute can be dealt with. He stated that from what he had read online, it was too late to do so.
- 2.14. He stated that if he had been sent a "letter before action" he would have attempted to resolve this situation amicably. He stated that he repaired damage to the flat which occurred while they were staying in the property. He stated that he would have been very accommodating if the Applicant had told him that she wanted to make a claim against him. When asked what he meant by a "letter before action", he stated that usually you would send a letter before action for a small claim to allow the defendant to come to an amicable agreement without involving the courts which he would have much preferred. He stated that that did not happen and it was just a point that he had been thinking about, why he had not been given the opportunity to come to an agreement. He stated that he thinks that the email chain he lodged shows how accommodating he has been. He stated that he did actually want to help them out.
- 2.15. He accepted that he had deprived the Applicant of the opportunity to dispute the deposit deductions through the scheme and have the matter considered by an adjudicator, which is all likely to have been concluded fairly quickly within the time after the end of the tenancy.
- 2.16. He stated that he would have rather given the balance of the deposit back to the Applicant than have this claim made against him. He stated that he understood that that was a different type of claim and that this claim related to

his admitted failure to lodge the tenancy deposit in a deposit protection scheme.

2.17. He accepted that he has not given the prescribed information to the Applicant or her flatmate.

2.18. He stated that after the end of the tenancy, half of the deposit was retained for rent and the other half was retained for damage.

2.19. He stated that this is his only rental property.

2.20. He stated that he is registered as a landlord with Landlord Registration Scotland.

2.21. He stated that it was an oversight and he apologises to the Applicant. He submitted that three times the deposit is a very large amount for him to pay out considering the circumstances and that he thought that the amount that has been claimed seems to him to be excessive.

2.22. He invited the tribunal to take into account his written and oral submissions in considering the appropriate level of the payment order for his admitted failure to lodge the deposit in the scheme at any time or to provide the prescribed information to the Applicant and her flatmate.

2.23. He began to make reference to a website, Streathers.co.uk. in relation to claims being brought by one tenant only, and then confirmed that the information he was reading from related to the law of England & Wales so he did not pursue the point.

2.24. The Applicant's response

2.25. The Applicant stated that she was really annoyed that the Respondent kept ignoring her and that she had asked several times about the deposit scheme. She stated that she did not get a fair opportunity to challenge his proposed deductions. She stated that she was working at the time that she was staying in the flat. She stated that she never received an inventory.

2.26. She stated that in relation to the proposed deductions, she disputed them apart from the wall which she had already said that she would pay towards as it was her responsibility. In relation to painting in general she stated that she would like to say that she painted the flat herself out of her own pocket, although she accepted that that matter was relevant to her other claim.

- 2.27. In relation to the other claim, she stated that she had submitted it to the tribunal in February 2020 and had not heard anything else. The tribunal clerk checked the Case Management System and also checked with the administration and was advised that the application was incomplete and could not be processed. The Applicant was advised of this and she was told that she could re-submit a full Application if she wished to do so.
- 2.28. She stated that she accepted the apology that the Respondent had given for his failure to lodge the deposit. She stated that she did not want it to happen to anyone else.
- 2.29. She stated that in her case, if the money had been lodged in the scheme, she would have contested the Respondent retaining £325.00 at the end.
- 2.30. She stated that she was making this claim on her own behalf and on behalf of Lucy (Sim) as well because the Applicant was the named lead tenant.

3. Findings in Fact

- 3.1. The Applicant and another tenant, Ms Lucy Sim, and the Respondent entered into a short assured tenancy for the Property on which started on 18 July 2017.
- 3.2. The Applicant and Ms Sim paid a £650.00 deposit to the Respondent in or about July 2017.
- 3.3. The tenancy ended on 18 November 2019.
- 3.4. The Application to the tribunal was made on 5 January 2020, within three months of the end of the tenancy.
- 3.5. The deposit should have been lodged with a deposit protection company within 30 working days of the start of the tenancy on 18 July 2017.
- 3.6. The Respondent has not lodged the Applicant's deposit with a tenancy deposit protection scheme at any time.
- 3.7. Following the end of the tenancy on 18 November 2019, the Respondent retained the whole deposit, £325.00 as agreed with the tenant in respect of rent to 18 November 2019; and £325.00 in respect of property damage/redecoration.

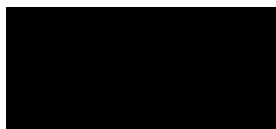
- 3.8. There is a dispute between the parties about the Respondent's retention of £325.00 in respect of property damage/redecoration.
- 3.9. The Applicant has been unable to dispute the retention of half of the deposit through a scheme as the deposit has not been lodged.
- 3.10. The Respondent was first notified that the Applicant was complaining about the non-lodging of the deposit on 20 November 2019 in emails from the Applicant.
- 3.11. The Respondent did not lodge the deposit originally due to an oversight when it was paid to him by the letting agent who collected it.
- 3.12. The Respondent was not aware that it was not lodged until November 2019 when he was asked by the Applicant about deposit protection.
- 3.13. The Respondent has not taken steps to lodge the deposit since November 2019 because he thought that it was too late to do so.
- 3.14. This is the Respondent's only rental property in Scotland and he resides abroad in Germany.

4. Discussion

- 4.1. The tribunal took account of the Applicants' written and oral submissions; and the Respondents' written and oral submissions.
- 4.2. In particular the tribunal had regard to the fact that the Applicant's deposit was unprotected throughout the tenancy from 18 July 2017, when it should have been lodged within 30 working days of the start of the tenancy. The Respondent cited oversight for his failure to lodge the deposit. The Respondent stated that he was aware of his obligations in respect of tenancy deposits but omitted to lodge this one. The deposit was unprotected for a period of two years and 4 months from the start of the tenancy. The Applicant was deprived of her right to deal with the dispute over the proposed deduction of £325.00 for property damage/redecoration. The tribunal took account of the Respondent's submissions in mitigation. He has stated that it is too late to lodge the deposit. The tribunal also took account of the fact that the full deposit was £650.00 and that the Applicant had agreed to deductions of £325.00 in respect of rent payable to the end of the tenancy, so the amount in dispute is £325.00.

- 4.3. For the reasons outlined, the tribunal decided to make an order for payment by the Respondent to the Applicant of the sum of £975.00 which is one and a half times the amount of the deposit. That sum was considered to be reasonable in all of the circumstances.
- 4.4. The tribunal chair informed the Applicant that the Payment Order could be enforced by the Applicant against the Respondent after the expiry of the permission to appeal period.
- 4.5. The Respondent requested sight of a time to pay application so that he could consider it. This was sent by the tribunal clerk during a short adjournment. After the adjournment and following some further discussions between the parties the Applicant agreed that she would not make another Application under rule 70 and the Respondent agreed that he would make payment of the sum ordered within 30 days and would not submit a time to pay application. Both parties undertook to advise the tribunal if payment was made.

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.



Ms. Susanne L M Tanner Q.C.
Legal Member/Chair

7 August 2020