



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

Chamber Ref: FTS/HPC/PR/21/2333

Property at 1/3 294 West Princes Street, Glasgow, G4 9EU (“the Property”)

Parties:

Mr Aidan Campbell, Mr Ocean Richards-Epega, Mr Conor Watt, Drumpark Farm, Madderty, Near Crieff, PH7 3PE; 114 Peabody Tower, Golden Lane, London, EC1Y 0RX; 1/1 167 Wilton St, Glasgow, G20 6DF (“the Applicants”)

Mr George Eastcroft, 5 Kirkburn Drive, Glasgow, G63 9EE (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £1845 should be made in favour of the Applicants.

Background

1. By application received on 24 September 2021, the Applicants seek an order in terms of Regulation 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). A tenancy agreement and copies of emails with a letting agent were lodged in support of the application.
2. The Tribunal served a copy of the application of the Respondent by Sheriff Officer on 18 October 2021. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 16 November 2021 at 2pm.
3. The CMD took place on 16 November 2021 at 2pm. Mr Campbell and Mr Watt participated. The Tribunal had been notified that the Second Applicant was

unable to participate as he is currently living abroad. The Respondent was represented by Ms Lockhart, the letting agent for the property.

The CMD

4. From the application form, the documents lodged in support of the application, and the information provided by the parties at the CMD the Legal Member noted the following agreed facts: -
 - (i) The tenancy started on 27 July 2020 and ended on 9 July 2021.
 - (ii) The Applicants each paid a third of the deposit (£410) between 24 and 25 June 2020. The total deposit paid was £1230.
 - (iii) The deposit was not lodged in an approved tenancy deposit scheme.
 - (iv) At the end of the tenancy, the letting agent (on behalf of the landlord) proposed a deduction from the deposit of £210 for cleaning. This was rejected by the Applicants.
 - (v) On 19 August 2021, the Applicants notified the letting agent that the deposit had not been lodged in an approved scheme and demanded the return of the deposit.
 - (vi) On 20 August 2021, the whole deposit was repaid to the Applicants.
5. Ms Lockhart advised the Legal Member that the breach of the 2011 Regulations is not disputed. She said that this was due to an oversight by the letting agent and not the Landlord. She explained that the letting agent provided the Respondent with a full management service for the property. This included responsibility for lodging the deposit with Safe Deposits Scotland. As with the other properties which the company manages, this is normally carried out automatically. A technical issue appears to have resulted in the Applicants' deposit not being lodged and remaining in the company's client account throughout the tenancy. However, it was not paid to the Landlord. Ms Lockhart advised the Legal Member that the letting agency is a small company and have struggled because of the pandemic with staff absences and people working from home. They were also particularly busy when the tenancy started as they manage a large number of student flats, and the early summer is a busy changeover time. She said that she had been completely unaware that the deposit had not been lodged until notified by the Applicants on 19 August 2021. She confirmed that there had been communication ongoing with the Applicants from the end of the tenancy until that date to attempt to agree the proposed deduction from the deposit, without success. She said that she usually tries to reach agreement with tenants before contacting SDS as it is usually resolved more quickly this way. When the Applicants notified her that their deposit had not been lodged, she immediately arranged to repay the deposit and the letting

agents paid the cleaning bill. Ms Lockhart concluded by saying that she has introduced new procedures at the agency to ensure that there is no repetition of the oversight, including a monthly audit and a checklist for her colleague to complete at the start of each tenancy. She said that, as the whole deposit had been returned, the penalty to be imposed should be no more than one times the deposit.

6. Mr Campbell did not dispute the explanation put forward by Ms Lockhart and said that they had assumed that a technical issue had been the cause of the failure. However, he said that this does not change the fact that their deposit was not secured for any part of the tenancy term and was therefore at risk. When the tenancy ended and there was a dispute about repayment, the Applicants did not have the option of having the dispute resolved by SDS. The period between the end of the tenancy and the deposit being repaid had been very stressful and they had no idea about when they would get the deposit back. There had been poor communication on the part of the letting agents and several weeks when they did not know what was happening. They also needed their deposit back to secure other accommodation. In the circumstances, the Applicants seek a penalty of twice the deposit.

Findings in Fact

7. The Applicants are the former tenants of the property.
8. The tenancy started on 27 July 2020 and terminated on 9 July 2021.
9. The Respondent is the owner and landlord of the property.
10. The Applicants paid a deposit of £1230 on 25 June 2020
11. The deposit paid by the Applicants was not lodged by the Respondent in an approved tenancy deposit scheme.
12. The deposit was repaid to the Applicants in full on 20 August 2021.
13. The failure to lodge the deposit in an approved scheme was due to oversight on the part of the letting agent who provided a full management service to the Respondent in connection with the property.

Reasons for Decision

14. Regulation 3 of the 2011 Regulations states –
 - (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.

(1A) Paragraph (1) does not apply –

- (a) Where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and
- (b) The full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord,
Within 30 working days of the beginning of the tenancy.

15. The Tribunal is satisfied that the Applicant's tenancy is a relevant tenancy in terms of the 2011 Regulations and that a deposit of £1230 was paid and not lodged in an approved deposit scheme within 30 days of the start of the tenancy. The application to the Tribunal was lodged on 24 September 2021. The Applicants have therefore complied with Regulation (9)(2) of the 2011 Regulations, which requires an application to be submitted no later than 3 months after the tenancy had ended.
16. Regulation 10 of the 2011 Regulations stipulates that if the Tribunal is satisfied that the landlord did not comply with a duty in terms of regulation 3, it “**(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.**” The Tribunal therefore determines that an order must be made in favour of the Applicants.
17. The Applicants seeks an award of twice the deposit. The Respondent concedes that the Applicants are entitled to an award but feels that this should be restricted to one time the deposit.
18. The Tribunal notes that the deposit was not secured for the whole tenancy, a period of almost 12 months. During that period the deposit was at risk, although the risk may have been much greater if the letting agent had paid the deposit to the landlord rather than holding it in their client account. The letting agents' failure to realise that they held this sum in this account for over a year is highly unsatisfactory and the Legal Member was pleased to note that Ms Lockhart has taken steps to ensure that there won't be a recurrence of the oversight. The Legal Member notes that the letting agency was affected by the pandemic and lockdown and is satisfied that the failure to comply with the regulations was not deliberate. Furthermore, the deposit was repaid in full to the Applicants when the matter came to light, although the Legal Member was not persuaded by the argument that it is better for tenants that negotiations about deductions from the deposit take place without involving the deposit scheme. It took 6 weeks for the deposit to be returned and until the Applicants complained about the failure to lodge the deposit, the parties had not reached an agreement about the proposed deduction.
19. The Legal Member notes that the failure to lodge the deposit was due to an oversight by the agent, rather than the landlord himself. However, where a landlord chooses to appoint an agent to manage a property on his behalf, the landlord is responsible for that agents' actions and failures and the Applicants

should not be prejudiced by this.

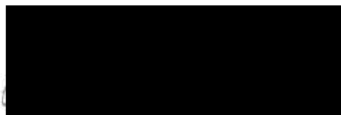
- 20.** Having regard to the length of time the deposit was not secured, and the stress and anxiety experienced by the Applicants between the end of the tenancy and the repayment of the deposit, the Tribunal is satisfied that the award should not be at the lower end of the scale. However, the Legal Member is also satisfied that the breach was the result of genuine error or administrative oversight and that the letting agent (on behalf of the landlord) took appropriate steps to repay the deposit and to address the administrative issues when the matter came to light. In the circumstances, the Legal Member is satisfied that an award of one and a half times the deposit should be made

Decision

- 21.** The Tribunal determines that an order for payment of the sum of £ 1845 should be made in favour of the Applicant.

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.



Josephine Bonnar, Legal Member

16 November 2021