



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

Chamber Ref: FTS/HPC/PR/19/3157

**Re: Property at Flat 2/1, 5 Sherbrooke Drive, Pollokshields, Glasgow, G41 5AA
("the Property")**

Parties:

**Miss Kimberley Brown, Mr Liam McLaughlin, Flat 0/2, 390 Main Street,
Rutherglen, Glasgow, G73 3AX ("the Applicants")**

Ms Eileen Reid, 5 Sherbrooke Drive, Glasgow, G41 5AA ("the Respondent")

Tribunal Members:

Virgil Crawford (Legal Member)

Decision (in absence of the Respondent)

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

BACKGROUND

1. By lease dated 21 March 2016 the Respondent let the Property to the Applicants;
2. The tenancy commenced on 21 March 2016;
3. The tenancy ended on 11 July 2019;
4. The lease required the Applicants to pay a tenancy deposit of £595.00. This was paid by them. It was paid to the letting agents then used by the Respondent;
5. The tenancy deposit was never lodged with an approved tenancy deposit scheme;
6. During the tenancy the Respondent engaged the services of a new letting agency. At that time the Respondent was made aware that the tenancy deposit had not been lodged with an approved tenancy deposit scheme;

7. In written submissions forwarded to the Tribunal the Respondent stated that, at that time, she had received advice that, due to there being damage to the Property, she did not need to lodge the deposit funds with an approved scheme but could use the funds to cover the cost of repairs for which the Applicants were, according to the Respondent, liable;
8. The tenancy deposit was never lodged with an approved tenancy deposit scheme;
9. The Applicants presented an application to the Tribunal for an order under Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011(the "TDS Rules") on 7 October 2019;

THE CASE MANAGEMENT DISCUSSION

10. The Applicants attended the Case Management Discussion. The Respondent did not;
11. The Respondent had lodged written responses, had forwarded various e mails to the Tribunal and had replied to e mails, one of which, on 16 December 2019, told the Tribunal to liaise with CPM Glasgow Ltd on her behalf. In the circumstances the Tribunal caused enquiry to be made as to whether there was a reason for the absence of the Respondent or a representative;
12. The Tribunal did not hold a telephone number for the Respondent. The Tribunal called the telephone number for CPM Glasgow Ltd but found it to be unobtainable. The Tribunal used an internet search engine to locate an alternative number for CPM Glasgow Ltd. An alternative number was located but was also unobtainable;
13. The Tribunal had intimated the date, place and time of the Case Management Discussion to the Respondent via CPM Glasgow Ltd. In the circumstances the Tribunal, being satisfied in terms of Rule 24 of The First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the "FTT Rules") that the Respondent had received reasonable notice of the same determined that it was appropriate to proceed in accordance with Rule 29 of the FTT Rules;
14. The Applicants requested that the tribunal proceed with the Application. They had little to say beyond what was already stated in their application and the responses received from the Respondent;

FINDINGS IN FACT

15. The Tribunal made the following findings in fact:-
 - a) By lease dated 21 March 2016 the Respondent let the Property to the Applicants;
 - b) The tenancy commenced on 21 March 2016;
 - c) The tenancy ended on 11 July 2019;
 - d) The lease required the Applicants to pay a tenancy deposit of £595.00. This was paid by them. It was paid to the letting agents then used by the Respondent;
 - e) The tenancy deposit was never lodged with an approved tenancy deposit scheme;

- f) During the tenancy the Respondent engaged the services of a new letting agency. At that time the Respondent was made aware that the tenancy deposit had not been lodged with an approved tenancy deposit scheme;
- g) In written submissions forwarded to the Tribunal the Respondent stated that, at that time, she had received advice that, due to there being damage to the Property, she did not need to lodge the deposit funds with an approved scheme but could use the funds to cover the cost of repairs for which the Applicants were, according to the Respondent, liable;
- h) The tenancy deposit was never lodged with an approved tenancy deposit scheme;
- i) The Applicants presented an application to the Tribunal for an order under Regulation 10 of The TDS Rules on 7 October 2019;

REASONS FOR DECISION

- 16. The purpose of the TDS Rules is to provide protection to tenants in relation to deposit funds, to ensure these funds are available at the termination of a tenancy, and to ensure any dispute between the Parties is resolved in a fair manner by the TDS;
- 17. In this case there had been a flagrant disregard of the TDS Rules and their purpose has been defeated;
- 18. Whilst it does appear that the initial fault lay with the original letting agents, the Respondent was made aware during the tenancy, when she changed letting agents, that the deposit funds had not been lodged. At that point, therefore, the Respondent had an opportunity to remedy the error which had occurred but elected not to do so;
- 19. The tenancy ended over 8 months ago now and the deposit funds have never been returned;
- 20. The Applicants dispute that any funds are entitled to be withheld by the Respondent but have been deprived of the opportunity to use the free dispute resolution process provided for by the tenancy deposit schemes;
- 21. Given that the initial error appears to have been due to a failure on the part of a letting agency the Tribunal considered that there was some mitigation. The Tribunal also, however, considered that the Respondent had an opportunity to lodge the funds when she changed letting agents but did not do so. The Tribunal did not have any verifiable information to suggest that the Respondent was an experienced landlord;
- 22. In all the circumstances the Tribunal considered that an order for payment of twice the deposit amount was appropriate.

DECISION

The Tribunal granted an order against the Respondent for payment of the sum of ONE THOUSAND ONE HUNDRED AND NINETY POUNDS (£1,190.00) STERLING to the Applicants

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.

Mr Virgil Crawford

Legal Member/Chair

13 March 2020

Date