



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/20/1464

Re: Property at 1 Fancy Farm Place, Greenock, PA16 7LJ (“the Property”)

Parties:

**Miss Lynn Gilmour, 13 Essex Road, Greenock, PA16 0JJ
 (“the Applicant”)**

**Mr Mark Bradley, 15 Ashton Road, Gourrock, PA19 1BY
 (“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 ONE THOUSAND FIVE HUNDRED POUNDS (£1500.00) Sterling

1. Procedural background

- 1.1. On 19 December 2019, Legal Services Agency Limited, Fleming House, 134 Renfrew Street, Glasgow, G3 6ST made an Application to the tribunal on behalf of the Applicant. Mr Christman advised that they would not be acting as the Applicant’s Representative for the purposes of further procedure.

- 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's Representative attached to the Application:
 - 1.3.1. A notice to quit dated 21 August 2019;
 - 1.3.2. A section 33 notice dated 21 August 2019;
 - 1.3.3. Email from Safe Deposits Scotland dated 11 October 2019;
 - 1.3.4. Email from Letting Protection Service Scotland dated 15 October 2019;
 - 1.3.5. Email from My Deposits Scotland dated 31 October 2019;
 - 1.3.6. Redacted bank statement from Applicant showing cash withdrawals to pay deposit.
- 1.4. The tribunal's administration confirmed that the Respondent is registered with Landlord Registration Scotland as the landlord of the Property.
- 1.5. On 7 July 2020, the tribunal's administration contacted the Applicant's Representative to state that as it was not named as a representative on the Application Form, they would not receive any further correspondence from the tribunal and that the tribunal's administration would communicate with the Applicant.
- 1.6. On 16 July 2020, the Application was considered by a legal member acting under the delegated powers of the President and the Application was accepted for determination by the tribunal.
- 1.7. A Case Management Discussion ("CMD") teleconference was fixed for 4 September 2020 at 1000h and parties were notified of the date, time and details of the CMD. Notification of the CMD was served on the Respondent by Sheriff Officers.
- 1.8. On 10 August 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 4 September 2020 at 10.00 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 31 August 2020. The Application paperwork and notification of the hearing was served on the Respondent by Sheriff Officers.

1.9. The Respondent did not submit any written representations or documents in advance of the hearing.

1.10. On 3 September 2020, the day before the CMD, the Applicant contacted the tribunal's administration to ask whether a CMD had been scheduled. The tribunal's administration confirmed the date and time and forwarded the notification details which had already been issued.

2. Case Management Discussion ("CMD") – 4 September 2020 – by teleconference

2.1. The Applicant attended the teleconference. She indicated that she was representing herself.

2.2. The Respondent attended the teleconference. Mrs Sandra Bradley, the Respondent's mother, initially attended the teleconference with her son. There was a preliminary discussion about her intended role. The Respondent indicated that she would be a witness to factual issues as she had dealt with the Applicant's tenancy. After a period of adjournment for the Respondent to discuss matters, with his mother, he indicated that as Mrs Bradley would be a witness in the event of a hearing, that she would leave the call. Mrs Bradley left the call.

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 initially stated that he did not realise that there were two cases calling but then accepted that he had been served by Sheriff Officers with two separate sets of papers. He confirmed that he had the papers for the case PR/20/1464 in front of him.

2.6. The Respondent accepted that at the start of the tenancy a deposit of £600.00 was paid to him by the Applicant via the Respondent's mother, Mrs Bradley. He stated that it had been paid in instalments at the start of the tenancy.

2.7. The Respondent stated that he had a hard copy of the tenancy agreement. The Respondent stated that the tenancy started on 7 April 2014.

- 2.8. In relation to the tenancy deposit, the Respondent stated that the tenancy agreement states that the “rental bond” is £600. The tribunal chair asked if he had the facility to send an image of the document and he confirmed that he would do so.
- 2.9. The Respondent agreed that that the tenancy ended on 30 September 2019.
- 2.10. The Respondent stated that he has been a landlord for 10 or 11 years. This is his only rental property. He has never managed it himself. His mother, Mrs Bradley has dealt with it. There has been no letting agent. He is not aware of a landlord’s duties under the 2011 Regulations. He has not informed himself about his duties since the application documentation was served on him nor has he discussed it with his mother.
- 2.11. The Respondent was initially unable to state whether there was any defence to the Application.
- 2.12. The tribunal chair decided to permit the Respondent an adjournment to discuss matters with his mother.
- 2.13. During the adjournment, the tribunal chair received a copy of the tenancy document referred to by the Respondent and noted that the document did not refer to a Scottish statutory provisions. The Respondent sent a document headed “Residential Tenancies authority” “Tenancy Agreement (form 18a)”, “Residential Tenancies and Rooming Accommodation Act 2008.” It appears to relate to legislation in Queensland.
- 2.14. Following the adjournment, the Respondent stated that having had the opportunity to discuss matters with his mother, it was admitted that there had been breaches of the duties on him as landlord to lodge the Applicant’s deposit and to provide the required information about deposit protection to the Applicant.
- 2.15. The Respondent stated that the money was not put into a bank account. He stated that the reason why it was not paid into a scheme initially was due to payment in instalments. At the end of that period, it went out of his mother’s mind. He stated that his mother was dealing with other family issues in relation to his brother’s health. In response to a question from the tribunal chair, the Respondent had no other explanation as to why the duties had not been complied with between April 2014 to 30 September 2019.
- 2.16. The Respondent stated that he is back living in the Property now and that it is no longer tenanted.

- 2.17. The Respondent stated throughout the tenancy the Applicant's deposit was sitting at his mother's home in a tin. that at the end of the tenancy, the Applicant had asked his mother for some of the money back early so she could pay for van removals, namely £150.00. It was signed for by the Applicant and 'M Murray'. It was paid back by his mother in cash.
- 2.18. The Respondent maintained that he was entitled to retain the balance of £450.00 (which is the subject of another application CV/20/1463 in which a CMD is also being held on 4 September 2020). He stated that there were rent arrears of £121.50 that the Applicant agreed that she would pay out of that deposit. In relation to the balance, the Respondent stated that following an inspection of the Property he informed his mother to tell the Applicant that they were retaining the balance in respect of property damage.
- 2.19. The Respondent stated that he has the £450.00 in cash as his mother gave it back to him.
- 2.20. The Respondent stated that his mother prepared the tenancy agreement. She did not obtain advice from a lawyer or a letting agent. He did not know whether it was any kind of Scottish tenancy agreement. He stated that he first saw the lease in October 2019.
- 2.21. The Respondent made submissions in mitigation in relation to the amount of the payment order. He stated that he is, and was at the time of the tenancy, unaware that there were any obligations on him as a landlord in relation to tenancy deposits. He submitted that the maximum sum would be really harsh for making a mistake and being unaware of what he had to do. The Respondent apologised to the Applicant at that point in the CMD for the failure to lodge the tenancy deposit but accepted that no apology had been made previously. He stated that his mother was understanding with the Applicant over the tenancy and as such he thinks that the maximum is a bit harsh.
- 2.22. The Respondent stated that he is intending to defend the other case (the civil claim CV/20/1463). He accepted that his admitted failures had deprived the Applicant of a resolution of any dispute over the deposit through the tenancy deposit protection scheme.

2.23. **The Applicant's submissions in response**

2.24. The Applicant disputed the suggestion that payment by instalment could account for any part of the period that the deposit was unprotected. She stated that the deposit was paid up over a month at the start of the tenancy. She referred to her bank statements which had been lodged.

3. Findings in Fact

3.1. The Applicant and the Respondent entered into a tenancy for the Property which started on 7 April 2014.

3.2. The tenancy document issued to the Applicant by the Respondent, via his mother, was for a foreign type of tenancy.

3.3. The Applicant paid a £600.00 tenancy deposit to the Respondent via his mother, Mrs Bradley, in cash instalments in or around April 2014.

3.4. The deposit was retained in a tin at the Respondent's mother's property.

3.5. The tenancy ended on 30 September 2019.

3.6. The Application to the tribunal was made on 19 December 2019, within three months of the end of the tenancy.

3.7. The deposit should have been lodged with a deposit protection company within 30 working days of the start of the tenancy on 7 April 2014.

3.8. The Respondent has not lodged the Applicant's deposit with a tenancy deposit protection scheme at any time.

3.9. Following the end of the tenancy on 18 November 2019, the Respondent repaid £150.00 to the Applicant and retained the balance of £450.00.

3.10. There is a dispute between the parties about the Respondent's retention of £450.00 which is said to be in respect of rent arrears and property damage/redecoration, in respect of which the Applicant has made an application to the tribunal.

3.11. The Applicant has been unable to dispute the retention of the balance of the deposit through a scheme as the deposit has not been lodged.

- 3.12. The Respondent is and was at the time of the Applicant's tenancy unaware of statutory deposit protection.
- 3.13. The Respondent has not taken steps to lodge the deposit since the Application was made.
- 3.14. The Property is the Respondent's only rental property in Scotland.

4. Discussion

- 4.1. The tribunal took account of the Applicants' written and oral submissions; and the Respondents' oral submissions.
- 4.2. In particular the tribunal had regard to the fact that the Applicant's deposit was unprotected throughout the tenancy from April 2014 for a period of five and a half years, when it should have been lodged within 30 working days of the start of the tenancy. The Respondent admitted that he was unaware of the duties on him as a landlord in respect of tenancy deposits and that he had taken no steps since being served with the tribunal documentation to do so. The Applicant was deprived of her right to deal with the dispute over the proposed deduction of £450.00 for rent arrears and property damage and has had to make a separate application to the tribunal in respect of the same, which is ongoing almost a year after the tenancy ended. The tribunal took account of the Respondent's submissions advanced as mitigation but considered that little had been advanced which actually amounted to mitigation, other than the fact that this was his only rental property and that he had entrusted the property management to his mother. However, he could and should have ensured that his obligations were complied with, whatever method of property management he chose. The use of a tenancy agreement emanating from another jurisdiction was another indication that the Respondent did not fulfil his legal duties as a landlord.
- 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 £1500.00 which is two 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.

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

4 September 2020