



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 on an application made under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/23/0419

Re: Property at East Renfrewshire Golf Club, Newton Mearns, Glasgow, G77 6RT (“the Property”)

Parties:

Mrs Lauren Findlay, The Bungalow, East Renfrewshire Golf Club, Newton Mearns, Glasgow, G77 6RT (“the Applicant”)

East Renfrewshire Golf Club, East Renfrewshire Golf Club, Ayr Road, Newton Mearns, Glasgow, G77 6RT (“the Respondents”)

Tribunal Members:

George Clark (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted without a Hearing and made an Order for Payment by the Respondents to the Applicant of the sum of Five Hundred Pounds (£500).

Background

1. By application, dated 9 February 2023, the Applicant sought an Order for Payment in respect of the failure of the Respondents to comply with Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicant’s complaint was that the Respondents had failed to lodge her deposit of £375 in an approved tenancy deposit scheme. The Applicant was seeking an Order for Payment of three times the amount of the deposit.
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Respondents as landlords and the Applicant and Mr Alan Sheppard as tenants, commencing on 15 January

2019 at a rent of £750 per month, with a deposit of £375. The Applicant also provided with the application confirmation from Mydeposits Scotland, dated 13 January 2022, that the deposit was protected with them from 12 January 2022.

3. The Applicant stated that she had only become aware of the failure to lodge the deposit when she was in communication with the Respondents following their intimation of a rent increase. On contacting mydeposits Scotland, the scheme with which, according to the terms of the tenancy agreement, the deposit was to be lodged, she discovered that it had not been done. She raised the matter with the Respondents' Board of Management, and it was lodged a few days later. She said that the Respondents had blamed their previous Golf Club Manager, but her view was that it was a Board responsibility.
4. The Applicant also raised other issues which, in her view, showed a pattern of the Respondents failing in the duties placed on them as landlords, namely the failure to provide her with an Energy Performance Certificate ("EPC") and their failure to obtain an Electrical Installation Condition Report ("EICR") prior to the commencement of the tenancy. The EPC, a copy of which she provided, had only been obtained in March 2023 and the inspection in respect of the EICR was scheduled for 30 March 2023.
5. On 3 March 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondents were invited to make written representations by 13 April 2023.
6. On 9 April 2023, the Applicant provided the Tribunal with a copy of the EICR. There was considerable subsequent email correspondence regarding its terms, but that was not regarded by the Tribunal as relevant, the Applicant having confirmed that it was only the failure to obtain it before the tenancy began that was the issue, insofar as it demonstrated a pattern of behaviour by the Respondents.
7. The Respondents submitted written representations on 13 April 2023 per BTO, solicitors, Glasgow. They accepted that they had failed to lodge the deposit timeously with an approved tenancy deposit scheme and stated that the full-time employed Club Secretary was the responsible person in relation to landlord registration. The Board had been assured by the present secretary's predecessor that all necessary documentation to ensure the Respondents complied with their obligations had been obtained. The deposit had been lodged immediately when they became aware of the issue. The Applicant had suffered no loss, injury or damage, and the required information had now been given to the Applicant. No compensation should be awarded, and, in any event, the sum sought one year later in a continuing tenancy was excessive.
8. In later representations on 24 April 2023, the Respondents clarified that no blame was being attached to any individual, that it was accepted that

ultimate responsibility lay with the Board of Management, and that they did not at the relevant time have a cross-check procedure in place. They had, however, taken immediate steps to remedy this.

9. On 20 April 2023, the Applicant reminded the Tribunal that the Respondents had failed to lodge the deposit timeously, had failed to ensure the Property was safe by obtaining an EICR, had not obtained an EPC and had failed to update their landlord registration details following a change of Secretary.
10. On 21 April 2023, the Applicant sent the Tribunal a screenshot of a message from the Respondents of 12 January 2022, confirming that the deposit was now held by mydeposits Scotland and that they would forward a copy of the certificate on receipt. The Applicant contended that the message did not comply with the requirement to provide information to tenants, including the name and contact details of the scheme administrator of the tenancy deposit scheme to which the deposit has been paid.

Case Management Discussion

11. A Case Management Discussion was held by means of a telephone conference call on the morning of 3 May 2023. The Applicant was present. The Respondents were represented by Ms Rhona Wark, consultant for BTO, solicitors, Glasgow.
12. The Applicant advised the Tribunal that she was still looking for a payment at the higher end of the level that the Tribunal was able to order. She had not suffered any financial loss, but the failure to lodge the deposit had not been a one-off mistake, and it had caused her stress and anxiety. She confirmed that she was not looking to extend matters beyond the issue of the deposit, but that the failure to obtain the EPC and EICR illustrated why the payment should be at the higher end.
13. Ms Wark referred the Tribunal to the Certificate provided by mydeposits Scotland, confirming that the deposit was protected from 12 January 2022. She asked the Tribunal to take into consideration that the tenancy is continuing more than a year after the deposit was lodged. She argued that the particulars of the present case did not merit a sanction at the higher level. Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations is permissive, not mandatory, and does not establish a tariff. The application had not been made until more than a year after the problem regarding the deposit was identified. The Respondents accepted that it would have caused concern to the Applicant at the time, but, once the Respondents had become aware of their failure, it had been rectified within two days. The amount of the payment to be ordered by the Tribunal had to be proportionate and Ms Wark's view was that it should be at the lower end.

Findings in Fact

- The Parties entered into a Private Residential of the Property commencing on 15 January 2019. The rent was £750 per month, with a deposit of £375.
- The Respondents did not lodge the deposit of £375 with a tenancy deposit scheme until 12 January 2023.

Reasons for Decision

14. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to enable it to determine the application without a Hearing.
15. Under Regulation 3(1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("The 2011 Regulations"), a landlord must, within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme. Under Regulation 10, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal **must** order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit. Regulation 42 of the 2011 Regulations requires a landlord to provide certain information to tenants, including the name and contact details of the scheme administrator of the tenancy deposit scheme to which the deposit has been paid.
16. The view of the Tribunal was that the Respondents' failure to lodge the deposit with an approved tenancy deposit scheme, whilst serious, was not deliberate. It may have been due to a lack of knowledge of the legal requirements and the Respondents had acknowledged their failure to put in place proper processes to ensure they complied with all the legal obligations that are incumbent on landlords, including the requirement to lodge the deposit in an approved scheme and provide tenants with details of where their deposits are held. Ignorance of these obligations, or inexperience of residential letting is, however, no excuse and the Tribunal noted that other requirements regarding the EPC and EICR had not been timeously complied with.
17. The Tribunal accepted that, when the Respondents became aware that they had failed to meet their obligations, they took immediate steps to remedy the situation. Nevertheless, the deposit had been at risk for a period of 3 years. The Tribunal could not speculate on the impact that this failure might have had, if the tenancy had ended during that period, but had that happened, the Applicant would have been denied the right to have any claims by the Respondent against the deposit adjudicated independently by a deposit scheme administrator.
18. The Tribunal noted that the Deposit Protection Certificate referred to a leaflet which, it said, should have been provided by the Respondents with the Certificate. The Respondents did not provide it, but the Tribunal noted, firstly, that it is not a requirement of Regulation 42 that such a leaflet be

provided and, secondly, that the Certificate provided a link to the mydeposits Scotland website, in the event that it was not provided. The reverse of the Deposit Protection Certificate included the name and contact details of the scheme administrator and the Certificate itself contained the further information required by Regulation 42.

19. The Applicant did not suffer any actual financial loss arising from the Respondents' failures and, albeit very late, the deposit was secured and the EPC and EIRC were obtained. The Tribunal did not attach any weight to the fact that the Applicant had not made her application for more than a year after the deposit was lodged in an approved scheme, as the catalyst may have been her later discovery that other legal requirements had not been met.
20. Having taken into account all the facts and circumstances of this particular case, the length of time the deposit had been at risk, the fact that the Respondents' failures were rectified as soon as reported to them and the level of stress and anxiety that would reasonably have been suffered by the Applicant during the period between her becoming aware of the issue and its being rectified, the view of the Tribunal was that the sanction should not be at the upper end of the range of payments that it could, at its discretion, order, and that an amount which was fair, proportionate and just, was £500,

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.

George Clark

3 May 2023

Legal Member/Chair

Date