



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

Chamber Ref: FTS/HPC/PR/20/1864

Re: Property at Flat 1/1, 16 Arlington Street, Glasgow, G3 6DU (“the Property”)

Parties:

Mr Sajid Chowdhury, Mr Owain Fergusson, Mr Rowan Glenny, Mr Max Lamprecht, 3/2, 6 Barrington Drive, Glasgow, G4 9DT; 14 Newbyth Steading, East Linton, East Lothian, EH40 3DU; 68 Bramblebury Road, London, SE18 7TG; 1/1, 435 Sauchiehall Street, Glasgow, G2 3LG (“the Applicant”)

Let's Direct (Southside) Ltd, Ms Nasreen Ahmad, 605 Cathcart Road, Glasgow, G42 8AD; 35a Thorn Road, Bearsden, G61 4BS (“the First and Second Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and David Fotheringham (Ordinary Member)

Decision (in absence of the Second Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Second Respondent pay the Applicants the sum of Eight Hundred and Nine Pounds and thirty eight pence.

Background

1. This was the continuation of an adjourned hearing to consider an application dated 18th August 2020 under Rule 103 for an order under Section 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (2011 Regulations).
2. The Tribunal had the following documents before it:-
 - a. The Application dated 18th August 2020
 - b. Copy draft lease in favour of the four applicants with a date of entry of 3rd April 2020
 - c. Copy e-mails from Lets Direct Southside to Natasha Sharples dated March 2020

- d. Copy proof of income from Mr Lamprecht to Lets Direct Southside dated 31st March 2020.
 - e. Written response from Lets Direct Southside to the Tribunal dated 9th October 2020
 - f. Lease in favour of the first three applicants and Ms Sharples dated
 - g. Extract from Scottish Landlord Register
 - h. E-mail from Lets Direct Southside dated 2nd December 2020.
3. The previous hearing was held on 2nd December 2020 at 10am by teleconference call and prior to that a Case Management Discussion had taken place where the following facts were established:-
- a. The applicants advised that the tenancy had originally been the first three applicants and Ms Natasha Sharples but that she left in March 2020 and Max Lamprecht the fourth applicant joined the tenancy. This is supported in the correspondence lodged by the First named respondent and the submissions they had made to the tribunal where they stated: - “The previous tenant vacated the Property in March 2020 and a new PRTA lease agreement was drawn up for the three previous tenants and one new tenant Mr Max Lamprecht which none of the four tenants signed. As we had a tenancy agreement for the three original tenants their shares of the deposit were already logged with Safe Deposit Scotland one part was released to the previous tenant when she vacated. Had Max come to the office to sign his agreement the deposit would have been logged with the other tenants. The new tenant collected his keys from the previous tenant and has actually never been present in Lets Direct (Southside) Office Ltd. The drawn up lease agreement has been attached as evidence. During the process Max was informed that he along with other tenants would have to sign the new agreement in order to be legally bound to the contract at the end of his application, he submitted the final document and confirmed by e-mail that he was aware a new contract had been drawn up.”The First Named Respondents also advise as no one came to sign it was not released to the tenants.
 - b. The following submissions were made at the CMD
The Applicants advised:-
 - a. That four original tenants Mr Chowdhury, Mr Fergusson and Mr Glenny along with a Ms Natasha Sharples had entered into a lease with the Respondent whereby they leased the Property from the Respondent from June 2019.
 - b. A deposit was paid by the original tenants to the Respondent of £1850 and this was lodged with Safe Deposits Scotland
 - c. Around the beginning of February (Mr Fergusson thought it was 3rd February and Mr Lamprecht was not sure but confirmed it was February) Mr Lamprecht moved into the property and Ms Sharples moved out.
 - d. Ms Sharples had advertised the room on a website and Mr Lamprecht had applied. The advert had said the rent was £462.50 and a deposit was required of £100. Mr Lamprecht confirmed he had paid the first month’s rent to Mr Glenny to add to the rest of the rent paid by the Applicants at the end of January 2020 and paid Ms Sharples the £100 for the deposit. He also confirmed he paid the rent due at the beginning

of each month when it was due to Mr Glenny who collected it and paid it to Lets Direct.

- e. Mr Fergusson confirmed that he thought that Ms Sharples had probably paid the difference because she wanted out of the Property and thought she had paid the full one quarter of the rent as a new deposit to Lets Direct.
- f. Both confirmed they did not sign a tenancy agreement. Both confirmed they moved out of the Property at the end of May 2020, on Saturday 30th May when they thought the tenancy would be ending because in their view it was for a year.
- g. Mr Fergusson confirmed that Lets Direct were the people he had contact with, he didn't know the name of any other person who may be the Landlord and did not have a copy of the original lease although he thought maybe Ms Sharples might have received a copy.

The First named respondent submitted that:-

- a. the Property was let to the original four tenants mentioned above from June 2019.
- b. That a deposit of £1850 was lodged at the end of June 2019 with Safe Deposits Scotland.
- c. That he believed Ms Sharples one of the original tenants had let out her room privately but that the Respondents were aware she was leaving and aware Mr Lamprecht was wishing to be a tenant and that by the end of March 2020 he had a final piece of information from Mr Lamprecht to allow a new tenancy agreement to be drawn up in the names of Mr Chowdhury, Mr Fergusson and Mr Glenny and Mr Lamprecht which agreement he has sent to the tribunal and which states the start date is 3rd April 2020.
- d. Mr Iqbal confirmed Ms Sharples' quarter share of the deposit was released to her and that he received from Max Lamprecht the sum of £462.50 on 28th March as a deposit.
- e. That the remaining original sum of £1387.50 which had been lodged with Safe Deposits Scotland continued to be lodged there but with a new DAN number reflecting the change in tenancy.
- f. He confirmed that the further sum of £462.50 was never lodged with an approved scheme because in his view the tenancy had not started because the lease had never been signed. That without a signed lease there was no tenancy and therefore the obligations to lodge a tenancy deposit within 30 working days did not apply.
- g. In addition Mr Iqbal when asked advised that the landlord is Ms Nasreen Ahmad whose name he advised is on the HMO licence exhibited in the Property which he felt the applicant's would have seen.
- h. Mr Iqbal also advised that the tenancy deposit lodged with the scheme has been successfully claimed by the Respondents in view of the lack of notice the tenants gave that they were leaving the property.

At the end of the CMD a hearing was fixed where the following issues were considered: _

2. *What tenancy was in place from February 2020?*
3. *Was there a tenancy in place that meant the extra sum of £462.50 paid as a deposit should be lodged in a tenancy deposit scheme regardless of whether Mr Lamprecht was a tenant?*
4. *Who is the landlord against whom this application should be made? Is it the Respondents whose name appears as a c/o address in the draft lease prepared by themselves or is it Ms Ahmad who the Respondent advises they are representing? The Legal Member advised again that an application under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 can only be brought against a landlord not a letting agent.*
5. The Tribunal had issued a direction asking the parties to address some of those issues in writing and in response to that the Applicants wrote initially on 28th October 2020 asking to amend the application to include Mrs Ahmad as the Respondent and then clarified on 26th November that the correct name was Mrs Nasreen Ahmed who the Respondent had indicated at the CMD was the actual landlord of the Property, despite the fact this name is not mentioned in either the lease prepared for the Applicants in March/April 2020 or in the prior lease in favour of the first three Applicants and Ms Sharples a previous tenant.
6. The Respondent lodged a copy of the previous lease in favour of the first three named applicants and Ms Sharples which is dated June 2019 and signed by all parties except for Ms Sharples.
7. At the hearing on 2nd December all the Applicants were present and Mr Iqbal was present for the First named Respondent along with Miss Smith a colleague who was supporting him. The following evidence was given:-
 - a. The Tribunal raised the issue of whether the First named Respondent agreed that Mrs Ahmad was indeed the landlord and if the Respondent agreed she should be brought into the application as a party. Mr Iqbal confirmed that there was no dubiety that Mrs Ahmad was the landlord and he confirmed that given the terms of the Regulations any application should be made against her. He confirmed that her name as the holder of the HMO licence was displayed in the Property and he thought it would be obvious that she was the landlord. He admitted however that nowhere in the tenancy agreement entered into in June last year or the one prepared with Mr Lamprecht having moved in stated her name. He advised that was the company policy. He confirmed that the Respondents were the letting agent only and that he had informed Mrs Ahmad of these proceedings but did not invite her to attend.
 - b. Mr Iqbal also confirmed that he had thought a tenancy was not valid until the Agreement was signed by all parties and that this was why he had not lodged the £462.50 in a tenancy deposit scheme as none of the Applicants had signed the new tenancy agreement prepared with Mr Lamprecht's name added. Mr Iqbal has lodged a lease showing Mr Max Lamprecht as being added to the tenancy from 3rd April 2020 . He confirmed that the rent was paid for 4 tenants and that he was aware that Ms Sharples had left the property. He confirmed however that he had taken and kept the additional deposit monies of £462.50 after returning Ms Sharples' share of the deposit when she left the

Property. The legal member pointed out that in terms of Section 1 of the Private (Housing) (Tenancies) Scotland Act 2016 a tenancy does not need to be in writing to be valid.

- c. Mr Lamprecht advised that when he moved into the Property that had been his main or principal residence. None of the Applicants remember getting any e-mails or correspondence asking them to come and sign a new tenancy agreement.
 - d. Mr Iqbal also confirmed that as the tenants had not given the required 28 days' notice of termination he had successfully recovered the remaining deposit that was lodged with a tenancy deposit company in respect of that final months' rent. He also indicated that was why his company had retained the additional sum of £462.50 which was not lodged in the scheme.
 - e. The ordinary member of the Tribunal asked Mr Iqbal to confirm what sum was actually lodged with a tenancy deposit company as the tenancy agreement stated that the deposit would be £1,950 however at the previous CMD the sum mentioned as originally lodged on behalf of the four original tenants last year was only £1850 and the further sum lodged this year was £1387.50. Mr Iqbal confirmed that indeed the sum received last year and lodged was £1850 that after Ms Sharples share was returned to her the revised sum of £1387.50 remained with the deposit company and the additional sum of £462.50 paid by the Applicants was still kept by his company.
 - f. Mr Iqbal confirmed that Mrs Ahmed's address is as set out on the Scottish Landlord Register namely 35a Thorn Road Bearsden Glasgow.
8. The Applicants confirmed they wish to add Mrs Ahmad as an additional Respondent to the application, and had made that request in writing to the Tribunal. The First Named Respondent believed that Mrs Ahmad should be the sole Respondent as the Respondent maintains they are the letting agent and not the Landlord.
 9. The Tribunal agreed that Mrs Nasreen Ahmad of 35a Thorn Road Bearsden Glasgow G61 4BS would be added as a second Respondent and that she should be given the opportunity to respond to the application. The Tribunal directed that all papers including the application, notes of the CMD and the first hearing should be served on Mrs Ahmad and Mrs Ahmad be invited to attend the next hearing on 15th February 2021 at 10am by teleconference and to provide any written representations.
 10. The Tribunal indicated it would like to hear from Mrs Ahmad as to whether she accepts she is the Landlord in the lease of the Property to the Applicants from March 2020 and Mrs Ahmad was invited to make any representations about the application and in particular the failure to lodge the sum of £462.50 in a tenancy deposit scheme within 30 days as per Regulation 3 of the 2011 Regulations.
 11. The First Respondent wrote to the Tribunal by e-mail on 21st December 2020 saying "I would like to take this opportunity to advise that we accept liability due to the fact that we were under the impression that the contract had to be signed by all tenants for the deposit to be logged". The Respondent also

reiterated the position regarding their claim for the return of the deposit and asked that that be taken into account when penalising the Respondent.

Hearing on 15th February 2021

12. The hearing was scheduled to commence at 10am however at that time only Mr Iqbal for the First named respondent was in attendance on the teleconference line. On enquiring it was discovered that some of the Applicants had forgotten to dial in and three of the Applicants then proceeded to do so, namely Mr Fergusson, Mr Chowdhury and Mr Lamprecht. The Applicants all apologised for their late attendance.
13. The Second named respondent did not attend and the Tribunal asked Mr Iqbal if he was aware if Ms Ahmad wished to call in or was intending to do so. He advised that he was aware she had received the invitation but did not believe she would be attending.
14. The Tribunal noted that a full set of papers and an invitation to attend the teleconference hearing scheduled for 15th February 2021 had been served on the second named Respondent by sheriff officers on 11th January 2021 and so was content that intimation of the hearing had been made and that the second Named Respondent had chosen not to attend.
15. The Legal Member welcomed everyone and made introductions, she then recapped what had been previously discussed and invited Mr Iqbal to confirm what his position was. He reaffirmed that Ms Ahmad was the landlord in this tenancy, that he accepted that he had not thought the balance of the deposit had to be lodged given there was no written tenancy and mentioned that the full deposit had been lodged previously for the former tenancy. He also affirmed that the deposit in its entirety had been reclaimed or retained because the tenants had failed to give due notice of their intention to leave and therefore in his view the tenants had not suffered any prejudice.
16. The Applicants were then invited to provide any further comment on their claim and Mr Fergusson chose to speak for the applicants and confirmed that they were aware that Let's Direct Southside were only agents and again mentioned that at no time had any of them been sent or invited to sign the new lease. They were maintaining their claim.
17. The Tribunal having noted the additional and previous comments then adjourned to consider their decision and invited the parties to phone back to be advised of that decision.

Finding in Facts

1. The Second Named Respondent entered into a tenancy with the Applicants whereby the Applicants leased the Property from the Respondent from the 3rd April 2020 and stayed in the Property until the end May 2020. The Second Respondent is the landlord and the Applicants are the tenants in this tenancy.
2. The Respondent has claimed a further month's rent in lieu of notice.
3. The rent due was £1850 per month.
4. The deposit paid by the Applicants to Let's Direct Southside as agent of the Second Named Respondent was £1850 in total.

5. There had been a previous tenancy with the first three applicants and Ms Natasha Sharples that ended in March 2020. The original deposit of £1850 had been lodged with Safe Deposit Scotland.
6. The Respondents returned a fourth share of the original deposit to Ms Sharples and relodged the balance of that deposit namely £1387.50 with Safe Deposit Scotland in or around March/April 2020.
7. The Applicants were not at any time given information about where the balance of the deposit namely £462.50 had been placed.
8. The Applicant raised an application for payment of an order under Rule 9 of the Regulations on 18th August 2020 and this application is timeously made.
9. The sum of £1387.50 was placed in a tenancy deposit scheme but the balance of the deposit namely £462.50 has not been placed in an approved scheme during the tenancy.
10. The Respondents accepted the full payment of rent from the four applicants during the remainder of the tenancy and have reclaimed and retained the full amount of the deposit namely £1850, at the end of the tenancy.

Reasons for Decision

11. The Tribunal found that the Second Named Respondent is the landlord of the Property and the tenancy. She is named on the landlord register, her letting agent has confirmed she is the landlord and the Applicants, although they appear to not have been aware of her name, knew that the first named respondent was a letting agent and that they were not the landlord. It is unfortunate that the landlord's name is not spelt out on the draft lease as parties to a contract should be easily ascertained, but Mr Iqbal advised that Ms Ahmad's name would have been advertised in the flat as the holder of the HMO licence and the Tribunal accepts that for those reasons Ms Ahmad is the landlord in this application.
12. The Tribunal also accepts from the evidence given by the Applicants and the First named respondent that the four applicants are the tenants in the Property by virtue of a tenancy that started on 3rd April after Ms Sharples had left. The letting agent Let's Direct Southside Ltd accepted Mr Lamprecht as a suitable replacement tenant and prepared a draft lease with his name included along with the first three applicants. Mr Iqbal advised that he did not think that there was a formal lease without a signed tenancy agreement however he knew Mr Lamprecht had keys and was living in the Property, he had accepted Ms Sharples had left and returned a fourth share of the deposit to her and accepted payment of a new fourth share of the deposit from Mr Lamprecht which has ultimately been retained. A tenancy does not need to be in writing to be valid and the Tribunal accepts that there was a new tenancy created with the four applicants which started on or before 3rd April.
13. Mr Iqbal stated today and has stated previously that the balance of the deposit of £462.50 paid after Mr Lamprecht moved into the Property was never protected as it was not lodged with a tenancy deposit company and as such the Tribunal accepts that the landlord has failed to comply with the duty set out in Section 3 of the 2011 Regulations by failing to place the deposit in an approved scheme within 30 days of the beginning of the tenancy.

14. In terms of Section 10 of the 2011 Regulations, where a deposit has not been paid into an approved scheme, the Tribunal is obliged to make an order that the landlord pay the tenant an amount not exceeding three times the amount of the tenancy deposit.
15. The parties are not in dispute that part of the deposit of £462.50 made by the Applicants to the Respondent was not lodged timeously within the required 30 days and in fact was not lodged at all after the tenancy started. The Tribunal has to consider what penalty is appropriate and in doing so has considered the mitigating circumstances the First Respondent has put forward, namely that they had lodged the full deposit during the first tenancy with the first three applicants and Ms Sharples; that although they knew of Mr Lamprecht being in the Property they did not believe they had a duty to lodge the deposit until he had signed the lease. The First Respondent does not explain why they thought that and it is noted they are in the business of operating as a letting agent and should be aware of the regulations and the Landlord's responsibilities as they represent Landlords. The First named respondent also submitted that the tenants have not been prejudiced as the remainder of deposit was awarded to the Landlord by the tenancy deposit company and so the unlogged portion was also retained for that reason.
16. The Tribunal has to weigh that up along with the position that a responsible landlord should know that all deposits require to be lodged in an authorised scheme. The Regulations have been in force since 2011. The requirement is there so that the Tenants have their deposit protected and that at the end of the tenancy if there is any dispute they can avail themselves of the independent dispute adjudication service offered by the statutory deposit schemes.
17. The Tribunal finds that this was not a deliberate attempt to avoid placing the deposit but more one of ignorance, or misunderstanding of the duties involved regarding the lodging of a deposit and whether a written lease was required. The Landlord relied on an agent to manage her property and this tenancy. The Agent, Let's Direct Southside has openly admitted they did not lodge the remainder of the deposit of £462.50 when the tenancy changed from one with the first three applicants and Ms Sharples to one with the first three applicants and Mr Max Lamprecht. They had previously lodged the full deposit with a tenancy deposit company but withdrew that when Ms Sharples left the property, repaid Ms Sharples her share and then relogged only £13 87.50. Mr Iqbal admits he did this because he thought until the tenancy was fully signed there was no duty to lodge the balance of the deposit which was for Mr Lamprecht's share of the deposit. He does not deny that Mr Lamprecht was a tenant. He has drawn up a lease with Mr Lamprecht's name on it and appears to have received and kept the rent for 4 tenants which would include a share paid by Mr Lamprecht. Mr Iqbal admits that the Landlord has successfully claimed the deposit that was lodged with Safe Deposits Scotland back in respect of rent which he advised was for failure to give due 28 days' notice to leave. He also admits that the landlord has retained the £462.50 being the balance of the deposit for the same reason, payment of rent in respect of failure to give 28 days' notice. The landlord and Second Respondent has chosen not to attend the hearing today and has not lodged any written representations so her views are not known. However the duty is that of the Landlord. She may have chosen to rely on an agent but that does not absolve

her of the responsibility to ensure her tenants' deposit is protected by checking and clarifying what her agents have done.

18. Weighing up all these factors the Tribunal considers that an appropriate penalty should be at the medium end of the scale, given that part of the deposit was protected, that the length of the lease and therefore the time of the breach was not lengthy but that a responsible landlord and agent should have known that having accepted rent and a deposit from a tenant that this is a tenancy where the deposit needs to be protected and determines that an amount of 1.75 of the deposit is reasonable and appropriate.

- Decision

The Tribunal awards the sum of Eight Hundred and Nine Pounds 38 pence to the Applicants from the Second Respondent as a penalty for failure to lodge the deposit in a tenancy deposit scheme within 30 days.

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.

**Jan Todd
Legal Member/Chair**

**15th February 2021
Date**