

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 3 and 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/18/2481

Re: Property at 2-2, 337 Wellshot Road, Tollcross, Glasgow, G32 7QW (“the Property”)

Parties:

Mr Wojciech Lenik, Flat 2-2, 3 Dunira Street, Glasgow, G32 8FJ (“the Applicant”)

Mr Pat Owen, 7 West Farm Grove, Cambuslang, Glasgow, G72 7RN (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay to the Applicant an amount equal to twice the deposit, the sum of £600.

Background

The Applicant lodged an application, on 13th September 2018, under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”), claiming that the Respondent had failed to lodge a tenancy deposit in an appropriate scheme, in breach of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“TDS”).

The Case Management Discussion

The Applicant was not present, but was represented by Sally Mair of the Govanhill Law Centre.

The respondent was personally present, and was accompanied by his friend, Carolyn Webb.

Miss Mair addressed the Tribunal on her application. She said that the tenancy had been entered in to by the Respondent as landlord, and the Applicant as tenant, and had had begun on 15th November 2013. A copy of the lease was produced. A deposit of £300 had been paid, and a receipt given. A copy of the receipt was produced. The tenancy was terminated by mutual agreement on 14th June 2018. It was discovered that the Respondent had not lodged the Applicant's deposit in a Scheme, and this was in breach of TDS. Miss Mair had produced letters from each of the three schemes confirming that the deposit had not been lodged with them.

Miss Mair said that some distress had been caused to the Applicant as he had not had the deposit returned to him quickly. He had to engage legal representation to recover it for him. The Respondent returned the deposit by bank transfer on 28th July 2018.

The Respondent was asked for his position. He told the Tribunal that he accepted that he had not put a deposit in to any of the schemes. He referred to a document he had lodged at the Tribunal. He had lodged it by email on 5th November 2018. This document was not with the papers and had not been copied to the Applicant or his representative. The Chairperson adjourned the Tribunal for 10 minutes for copies to be made and for herself and Miss Mair to consider the contents.

The tribunal reconvened and the Chairperson went through the document with the Respondent. He explained that it had been an oversight not to put the deposit in a scheme. He had two other rental properties, but either rented them to family or used a letting agent, so he had not dealt with deposits for those. At the time of taking the deposit he was pre occupied with family issues as his daughter's pregnancy had issues and the child subsequently died. He did, however, hold the deposit in a bank account which was specific for his rental properties and did not mix the money with his own personal funds.

The Respondent went on to explain in his document that there had been a change of move out date, which he had accommodated, and that there were quite a few repairs to be done after the Applicant moved out. He listed the repairs. The Chairperson confirmed to him that the issue of repairs was not relevant in the context of an application under Rule 103.

The Respondent, in his document, said that he delayed in returning the Applicant's deposit as he wished to obtain costs for these repairs. The Applicant confirmed to the Chairperson that this was accurate.

The respondent disputed the Applicant's contention that he only returned the deposit after receiving correspondence from the Applicant's agent. He said that he did not receive that correspondence until after the deposit had been returned.

The Respondent, in his document said that he agreed with the Applicant that he would return the deposit in full, without any deduction for repairs, as a means of compensation the Applicant for the fact that the deposit was not placed in a Scheme. This was to be in full and final settlement. The Applicant was not present, and Miss Mair had no knowledge of the alleged agreement.

The Chairperson considered Rule 17 of the Rules and decided that, as the respondent did not deny that the deposit had not been placed in a Scheme she could make a decision at the Case Management Discussion.

Miss Mair was asked to address the Tribunal on the amount she thought should be awarded and her reasoning for that.

Miss Mair submitted that the Tribunal should make an award at the higher end of the scale. The reasons she gave were:

- (i) The tenancy had subsisted for 4 years and 7 months, which was a significant period of time for the deposit to remain unprotected;
- (ii) The landlord had admitted that he was aware of TDS and therefore his failure could be described as wilful;
- (iii) The Respondent had said he had two other rental properties, and therefore was an experienced landlord;
- (iv) A factor in deciding the amount of the penalty is that it should be a deterrent to other landlords;
- (v) The Applicant had suffered inconvenience by having to seek legal representation to have the deposit returned.

Miss Mair made reference to the authorities which she had lodged with her application.

The Respondent was asked to respond to the submissions.

He said that this was the first time he had taken a cash deposit from a tenant, he usually dealt with a letting agent.

The need to lodge the deposit went out of his head due to the family issues.

The Applicant had not reminded him to lodge the deposit.

He did not agree that he only returned the deposit after receiving the Agent's letter; he had returned the deposit before he got the letter.

He had reached a "full and final settlement" agreement with the Applicant.

He kept the deposit in a separate account and did not mix it with his personal money.

The Tribunal adjourned for a short period for the Chairperson to consider the matter. It was then reconvened and the decision was given.

Findings in Fact

1. The parties entered in to a tenancy agreement for the property at 2-2, 337 Wellshot Road, Tollcross, Glasgow, G32 7QW, which subsisted from 15th November 2013 to 14th June 2018
2. The Applicant paid a deposit of £300.

3. The Respondent did not lodge the deposit in a Scheme, which was in breach of Regulation 3 of TDS.
4. The deposit was not returned until 28th July 2018.

Reasons for Decision

Regulation 10 of TDS states that if satisfied that the landlord did not comply with the duty laid out 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. In deciding to award an amount equivalent to twice the deposit the Tribunal sought to ensure, that in keeping with the policy of the legislation that the sanction was fair, proportionate and just.

The Tribunal considered that the length of time that the deposit had remained unprotected was significant.

The Tribunal also considered that the failure to return the deposit immediately the tenancy came to an end, and the intention of making deductions for repairs was significant. Part of the purpose of TDS is to provide an independent service to resolve disputes regarding deductions.

The Tribunal considered that the penalty should act as a deterrent to the Respondent, and to other landlords, against not placing a deposit in a Scheme, and against attempting to contract out of the provisions of TDS.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

ALISON J KELLY

Legal Member/Chair

Date

12/11/18