



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

Chamber Ref: FTS/HPC/PR/18/2532

Re: Property at 29/8 Iona Street, Edinburgh, EH6 8SP (“the Property”)

Parties:

Mr Lukasz Blazejczyk, 18/3 Wardieburn Street West, Edinburgh, EH5 1ED (“the Applicant”)

Ms Tamsin Ansdell, 3/4 Madeira Street, Edinburgh, EN6 4AT (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of £975.00 be made in favour of the Applicant.

1. Background

1.1 This is an application under Rule 103 whereby the Applicant seeks an order for payment in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The application had been received by the Tribunal on 25 September 2018. There was no suggestion that the present application had not been made timeously.

1.2 The application was accompanied by, amongst other things, a copy of the written tenancy agreement between the parties and an email from the Respondent to the Applicant advising of deductions to be made from the tenancy deposit. The Respondent had made submissions, in the form of an email dated 6 November 2018.

2. The Case Management Discussion

2.1 The Case Management Discussion took place on 12 November 2018 within George House, Edinburgh. The Applicant was represented by Mr Andrew Wilson of Community Help & Advice Initiative. The Respondent was personally present and represented by Mr Douglas Ansdell.

2.2 From the documentation provided and with confirmation from the parties, it became apparent that there was little in the way of factual dispute. The parties were in agreement that they had entered into a tenancy agreement which commenced in November 2011, a deposit of £650 was paid by the Applicant to the Respondent in connection with this, there was a duty upon the Respondent in terms of the Tenancy Deposit Scheme (Scotland) Regulations (“the Regulations”) to lodge that deposit with an approved scheme, the deposit had not been lodged by the end of the tenancy agreement and only £56 had been returned to the Applicant. The Tribunal opined that the application could likely be decided on the basis of parties’ submissions at the Case Management Discussion and that a hearing was unnecessary. The parties were in agreement with this approach.

2.3 Mr Wilson confirmed that the application was insisted upon. He submitted that the Applicant sought payment of three times the deposit paid, amounting to £1950.00, albeit he conceded that the maximum award may be harsh. He submitted that the Tribunal ought to follow the approach used in the case of *Jenson v Fappiano* [2015] SC EDIN 6 in that the measure of assessing the sanction that should be applied was the extent of the breach of the regulations by the landlord in question. He further submitted that the deposit schemes existed to protect tenants and provide adjudication in the event of a dispute. He accepted that the landlord was not a professional or commercial landlord, in that she derived her principal source of income from letting property, but neither was she a charity. Mr Wilson advised that the Applicant had not taken any steps to indicate that he was disputing the deductions made by the Respondent to the deposit however, he pointed out that there was an error in the computation of the deductions leaving £50 of the deposit unaccounted for.

2.4 Mr Ansdell conceded that the Respondent was in breach of the Regulations. He submitted that the Respondent regretted being fully informed regarding the duties contained within the Regulations. He submitted that the Tribunal had discretion and requested that Tribunal take into account a lack of clear information available on the local authority’s and the Scottish government’s websites regarding the duties incumbent upon landlords, that the Respondent had not unfairly withheld the deposit and had not acted contrary to the intention of the Regulations and that any sanction would punish a considerate landlord who would fully abide by the Regulations in future. He referred to the submissions contained within the email dated 6 November 2018 from the Respondent. He advised that the Respondent had incurred losses as a result of

damage to the tenancy subjects caused by the Applicant during the course of the tenancy.

- 2.5 Ms Ansdell gave further information to the Tribunal personally. She advised that she had only become aware of the tenancy deposit schemes in or around 2012, when she herself was renting a property. This was after the commencement of the tenancy agreement between the parties. She mistakenly thought it was an optional scheme given that not all the landlords she entered into tenancy agreements with appeared to use it. She further submitted that the Applicant had indicated his satisfaction with the deductions made from the deposit.

3. Reasons For Decision

- 3.1 Given the extent of matters in agreement between the parties, the only issue the Tribunal required to consider was the extent of any sanction that should be applied to the breach of statutory duty on the part of the Respondent.
- 3.2 The Tribunal accepted that the approach suggested by Mr Wilson used in *Jenson v Fappiano* was the correct approach. The judicial act was to impose a fair, proportionate and just sanction in the circumstances of the case. The starting point in respect of the sanction to be applied was the extent of the non-compliance of the Respondent. In the present case, the Respondent had entirely failed to comply with Regulation 3 of the Regulations. She had proceeded to retain a significant portion of the deposit following the end of the tenancy agreement. Accordingly, the starting point was the maximum award possible.
- 3.3 The Tribunal then required to take into account the mitigating factors advanced by the Applicant and her representative. The Tribunal accepted that the Respondent was not a commercial landlord. The tenancy agreement between the parties had been entered into shortly after the Regulations had been introduced. This was the only property let by the Respondent. The Tribunal also accepted that the Respondent was operating under ignorance of the Regulations, in contrast with a landlord who wilfully disregards the Regulations. The Respondent accepted the breach of statutory duty. The Tribunal further took into account the monies returned to the Applicant. Whilst a significant portion of the deposit had been retained, the Respondent had provided reasons for the deductions. The Tribunal thought it significant that the Applicant had not disputed the deductions. There was also no suggestion that the issue of the lodging with the deposit had been raised at any other time.
- 3.4 Ignorance does not excuse the Respondent from any sanction. The Tribunal did not accept the suggestion that there was a lack of available information regarding the regulations. Information was available on the Scottish Government's website. The assurances regarding the future conduct of the Respondent was also irrelevant in assessing the sanction to be applied. Finally, any suggestion of the Applicant being responsible for further damage to fixtures and fittings is irrelevant. Should the

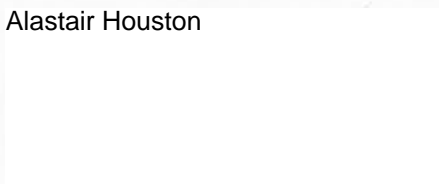
Respondent allege a breach of contract by the Applicant, then, as was noted in *Jenson v Fappiano*, remedies are available.

- 3.5 Accordingly, the Tribunal considered a sanction of one and a half times that of the deposit to be a just, fair and proportionate sanction. This equated to £975.00 to be paid to the Applicant by the Respondent.

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.

Alastair Houston



12 November 2018

Date