



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section the Housing (Scotland) Act 2006 section 121 and Regulation 9 the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/23/4263

Re: Property at 45 Franklin Place, East Kilbride, Glasgow, G75 8LT (“the Property”)

Parties:

Mr David Galbraith, 45 Franklin Place, East Kilbride, Glasgow, G75 8LT (“the Applicant”)

Ms Marlyn Campbell, 20 Wellshot Drive, Cambuslang, Glasgow, G72 8BT (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondents are in breach of her obligations in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“Regulation 3”). The Respondents shall make payment to the Applicant in the sum of £350.00 (THREE HUNDRED AND FIFTY POUNDS) STIRLING

Background

1. The Tribunal received an application from the Applicant in terms of Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017 which was signed on 28th November 2021. The Application included a lease which detailed that a deposit of £1050 had been paid.

2. On 12th January 2024, all parties were written to with the date for the Case Management Discussion (“CMD”) of 1st March 2024 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 2nd February 2024.
3. On 15th January 2024, sheriff officers served the letter with notice of the hearing date and the hands of the First Named Respondent. This was evidenced by Certificate of Intimation dated 15th January 2024.
4. On 12th February 2024, the Respondent emailed the Housing and Property Chamber lodging a submission setting out her defence to the case. In this she admitted to not lodging half of the deposit due to a misunderstanding on her part as the deposit she had taken was equal to two months’ rent payments not one.

The Case Management Discussion

5. A CMD was held on 1st March 2024 at 2pm by teleconferencing. The Applicant was not present and not represented. The Respondent was present and represented herself. The Tribunal waited until 2.05pm to allow the Applicant to attend. He did not attend at that point. The Tribunal proceeded without the Applicant in terms of Rule 29 of the Rules.
6. The Tribunal was satisfied that it was appropriate to decide in this case without the Applicant being present as the matter revolved around a breach of the regulations which had been admitted.
7. The Respondent explained that she had taken a larger deposit than she had taken before which amounts to two months rent. The previous tenant in the Property had left it in a poor state and had rent arrears. She had intended to sell the Property prior to that tenant moving in but had found the market difficult so had rent it out again. As she was going to sell it she had fully redecorated it. To protect herself from further redecoration costs should there be any damage with this tenancy she asked for a deposit which is double the monthly rent charge. The Respondent believed that she could only put one month’s deposit into a deposit scheme. She did not know that she could put the full amount into the deposit scheme. She kept the other amount in her business account. It was only when she was at a CMD for an eviction case that she has raised against the Applicant that she found out that she could put the entire amount in a deposit scheme. That was on 11th November 2023. She put the remaining amount into the deposit scheme the day after. Her husband had dealt with the Properties until their divorce in or around 2021. She did not understand all of her duties. She is to get advice now from a solicitor who specialise in housing law, the Scottish Association of Landlords, Citizens Advice Bureau or a similar organisation. The Tribunal noted that’s she must make sure that she is meeting all her legal obligations as a landlord. The Applicant is still in the Property so has not sought to have his deposit returned to him. The eviction CMD granted an order which she will be able to proceed with the eviction process on 20th February 2023 after which parties can apply for the deposit.

8. The Tribunal noted that the determination of this application not connected with any rent arrears that there may be on a Property. The rent arrears are a debt that is accrued by a tenant whereas this is centred around a penalty arising from a breach of the Regulations. If there are rent arrears on a rent account in a tenancy it does not affect the level of penalty awarded by a Tribunal.
9. The Tribunal considered that it was appropriate to grant an order as it was admitted by the Respondent that she had not paid the full deposit into the scheme within the required time limits.

Findings and reason for decision

10. A Private Rented Tenancy Agreement commenced 17th June 2022.
11. A deposit of £1050 was paid on 17th June 2022.
12. Half of deposit was lodged with Safe Deposit Scotland on 23rd June 2023. This equates to one month's rent charge namely £525. The deposit was not put into a scheme within 30 days of receiving it. This is a breach of the regulations.
13. The remaining £525 was kept in the Respondent's business bank account. She found out that she was able to deposit the whole of the deposit into a deposit scheme on 11th November 2023 when she attended another Tribunal where she was applying for an eviction order. She deposited the remainder of the deposit in a deposit scheme on 12th November 2023. The whole deposit is now being held in a deposit scheme.
14. The Applicant is still in the Property and is not at the point of applying to have his deposit returned to him.
15. The Respondents let out this and 5 other properties. All the other properties have had their deposits put into a deposit scheme.
16. This was the first time that the Respondent had asked for a two month rent level deposit as the previous tenant had left the Property in a very poor condition and had accrued arrears. She had newly decorated it prior to that tenant entering the Property. She wanted to secure her position by taking a larger deposit.
17. The Respondent admits that she did not follow the Regulations and place the deposit in a deposit scheme within 30 days of receiving the deposit (noting that it was received after the tenancy started).

Decision

18. The Respondent has a duty under Regulation 3 to place the deposit in an approved scheme within the specified time but failed to do so. The Respondent did engage with the Tribunal process to explain why the deposit was late, the full deposit has now been lodged in a deposit scheme and the Respondent is

looking to take further advice to ensure that she meets all her obligations as a landlord. Half of the deposit had been paid into a deposit scheme. The Tribunal considered that an award of one third of the full deposit was the correct level of the award. The Tribunal decided that a fair, just and proportionate sanction would be to order the Respondents to pay the Applicant the amount of £350.00 (THREE HUNDRED AND FIFTY POUNDS)

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.

1st March 2024

Legal Member/Chair

Date