



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

Chamber Ref: FTS/HPC/PR/23/4185

Re: Property at 37/14 Pilrig Heights, Edinburgh, EH6 5FB (“the Property”)

Parties:

Mr Rahul Shrivastava, Plot 138 Vinayak Vihar, Near Baba Paradise Garden, Golyawas, Jaipur, Rajasthan, 302020, India (“the Applicant”)

Mr Renganathan Subburaman, 137 South Gyle Mains, Edinburgh, EH12 7HU (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order be made against the respondent in the sum of One Thousand One Hundred Pounds (£1,100)

Introduction

This is an application under Rule 103 and Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Service of the application and intimation of the Case Management Discussion (CMD) was effected upon the respondent by Sheriff Officers on 15 January 2024. He lodged submissions by email dated 5 February 2024 and advised that he would not be participating in the CMD.

The CMD took place by teleconference on 1 March 2024 at 10.00 am. The applicant joined the hearing and represented his own interests.

Findings and Reasons

The property is 37/14 Pilrig Heights, Edinburgh EH6 5FB. The applicant is Mr Rahul Shrivastava who is the former tenant. The respondent is Mr Renganathan Subburaman who is the landlord.

The parties entered into a written tenancy agreement in respect of the property which commenced on 4 August 2022. The written agreement does not declare itself to be a 'private residential tenancy' but it is such a tenancy and qualifies as such under the Private Housing (Tenancies) (Scotland) Act 2016. The rent stipulated was £1,100 per calendar month and the applicant paid £1,100 by way of a deposit.

The tenancy ended on 9 October 2023. The applicant requested return of his deposit and identified that the deposit paid had not been protected in any of the Tenancy Deposit Schemes. The respondent does not dispute this. Lodged with the application is a copy of WhatsApp communication exchanges between the parties. Within these the respondent is evidenced to admit that the deposit paid was not protected and erroneously stated to the applicant that the Tenancy Deposit Scheme obligation is only applicable in the event of 'an assured shorthold tenancy'. This is incorrect and he appears to refer to legislation which does not apply in Scotland. The respondent has repeated the same misunderstanding within his written submissions

After requesting his deposit back, the sum of £139 was deducted from the deposit which the applicant did not agree with but did not have the benefit of assistance from an independent adjudicator from one of the Tenancy Deposit Schemes. He was therefore prejudiced. This tribunal is however is not adjudicating upon that deduction and whether that was fair is justified. The applicant has the ability to raise a separate application regarding that matter should he wish.

Three days before the CMD the respondent asked whether he could respond further to submissions lodged by the applicant. He was of course aware of the CMD should he wished to have participated. The material fact in the application is however not in dispute – the respondent did not protect the deposit. It is clear that he wished to respond to other elements of the applicant's submissions regarding the condition of the property and the retention of the £139 but as stated that is not something which the tribunal takes into account in this application. In accordance with applying the overriding objective in Rule 2 of the First-tier for Scotland Housing and Property Chamber Rules of Procedure 2017 the tribunal is obliged to deal with the proceedings in manner proportionate to the complexity of the issues and to avoid delay. There would have no merit in delaying determination of the application.

The respondent appears to have genuinely misunderstood his obligations as a landlord in Scotland. This however cannot excuse the respondent to adhere to his obligations. The 2011 Regulations create a strict liability.

The respondent did not comply with the requirements of the 2011 Regulations and in particular did not lodge the deposit paid into an approved scheme. The duties of landlords are contained within Regulation 3. This requires the landlord who has received the tenancy deposit in connection with the relevant tenancy to pay the deposit to a relevant scheme administrator from an approved scheme within 30 working days of the beginning of the tenancy. The respondent has failed to do this. He admits this.

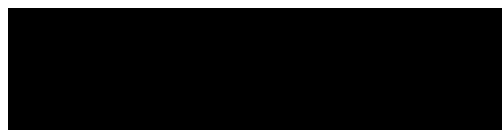
Regulation 10 requires the tribunal to make an Order against the respondent to pay to the applicant an amount not exceeding three times the amount of the tenancy deposit. There is no discretion. A penalty has to be imposed upon the respondent.

The Tribunal considered all relevant circumstances prior to making any Order under Regulation 10. The respondent was operating as a commercial landlord yet appears to have little experience or knowledge of residential lettings in Scotland. The respondent has failed to act diligently and professionally and failed to account to the applicant in the required manner. The applicant, who challenges the retention of part of the deposit, has been disadvantaged by the respondent's failure to pay the deposit into a scheme as required. He has however received the vast majority of the deposit paid.

In all the circumstances, the Tribunal ordered that the respondent pay to the applicant one times the amount of the tenancy deposit ie a total of £1,100. This is at the lower end of the scale and fair and proportionate in all of the circumstances. The public require to have confidence that residential landlords are operating fairly and that their deposits are secured in accordance with the law in force in Scotland.

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.



Legal Member/Chair

1 March 2024

Date