



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

Chamber Ref: FTS/HPC/PR/23/0858

Re: Property at 24 Scott Street, Motherwell, ML11PN (“the Property”)

Parties:

Mr Ruairi Mulvey, Mr Callum Graham, 24 Scott Street, Motherwell, ML11PN (“the Applicant”)

Ms Angela Wands, 101 Cypress Road, Motherwell, ML15FS (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Tony Cain (Ordinary Member)

Decision

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

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 signed.
2. 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 14th March 2023. The Application included a lease which detailed that a deposit of £500 had been paid.
3. On 3rd May 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 9th June 2023 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 24th May 2023.

4. On 5th May 2023, sheriff officers served the letter with notice of the CMD date and documentation upon the Respondent personally. This was evidenced by Certificate of Intimation dated 5th May 2023.
5. On 22nd May 2023, the Respondent emailed the Housing and Property Chamber advising that she had now deposited £500 in a deposit scheme. She said that she had never received the deposit but that her previous letting agent dealt with the Applicants. She has only one property. She had tried to trace the deposit but had been unsuccessful in doing so. She noted that the previous letting agent, Puffin Properties, had sold their business to Hemming Homes. She noted that she considered that her deposit had been stolen. The Respondent referred to her qualities as a landlord including not increasing the rent and fixing the boiler.

The Case Management Discussion

6. A CMD was held on 9th June 2023 at 2pm by teleconferencing. The Applicants were not present or represented. The Respondent was present and represented herself. The Tribunal proceeded in terms of Rule 29 of the Rules.
7. The Respondent said that she has been a landlord for 12 years. She has only this property that she lets. The letting of the Property is managed by Hemmings Properties who bought her previous letting agent's business. She considers that she has been a good landlord. She has not increased the rent, she has dealt with all the repairs and she has fixed the boiler recently which cost her £3000. She had not been aware of the tenancy deposit scheme. The Applicants are her third or fourth tenants. The issue of deposits has never come up before. The letting agent has always dealt with the taking and the return of the deposits. The Applicants are leaving the Property the weekend following the CMD. The Respondent said that it is her intention to sell the Property. This is due to the interest rates changing which have meant that it is no longer affordable for her to remain being a landlord. She accepted that she was not aware of her duties as a landlord in terms of the deposit.
8. The Tribunal noted all that was said and was in the middle of deliberating a one times fine when the Respondent said that she disputed that there was a deposit lodged as there was no evidence of this provided by the Applicants. The Tribunal asked why she had paid the deposit into the deposit scheme. The Respondent said that she had thought it was the right thing to do but disputed that one had been paid by the Applicants. The Respondent was referred to clause 7 of the lease which said that a deposit was to be taken at the signing of the lease and referred to it being £500. The Tribunal considered that it had no option but continue to a hearing as a clear matter of dispute had been raised, albeit late on in the CMD. The Tribunal noted that as it had not issued a final decision it was not limited to a one times fine as more evidence at the hearing may make a difference to the decision so the Tribunal was not bound to this amount.

9. The Tribunal considered that the following questions needed to be addressed at the hearing:
- a. Was a deposit paid by the Applicants when the tenancy started?
 - b. What evidence was there that a deposit was paid?
 - c. What evidence is there to say that a deposit has not been paid?
 - d. At clause 7 of the lease it states that a deposit was to be paid after the lease was signed. Is this sufficient proof that a deposit was paid given that there have been no objections to this clause for the entire duration of the lease?
 - e. What is the significance of the deposit being lodged by the Respondent? Does this affirm the Applicant's position? What other purpose did this action have other than to admit that the deposit had existed?
 - f. In the Respondent's previous tenancies had there been a deposit lodged?
 - g. Did a breach of the Regulations occur?
 - h. What evidence is there from Hemming Homes in terms of the deposit?
10. The Tribunal does not consider this to be an exclusive set of questions.
11. The Tribunal noted to the Respondent that she will need to present a case to the Tribunal to demonstrate that there has never been a deposit taken. The Respondent requires to address clause 7 in the lease, the lodging of a deposit in the an approved scheme and why the lodging of this deposit is not an admission of the existence of a deposit. The Tribunal noted that the Applicants will also need to prove their case.
12. The case was continued to a hearing to allow for evidence of the deposit either being paid or not being paid to be provided to the Tribunal. A direction will be issued.
13. On 23rd June 2023, the First Named Applicant emailed the Housing and Property Chamber with evidence of the deposit being paid to Puffin Properties on 29th March 2017.
14. On 28th August 2023, the Respondent emailed the Housing and Property Chamber attaching payment reports from Puffin Properties noting that there was no credit for £500.
15. On 10th August 2023, the Housing and Property Chamber emailed all parties with the date for the Hearing of 13th June 2023 at 10am by teleconferencing.

The Hearing

16. The Hearing was held on 13th September 2023 at 10am by teleconferencing. The Applicants were present and represented themselves. The Respondent was present and represented herself.

17. It was confirmed that the Applicants left the Property on 15th June 2023.
18. The First Named Applicant told the Tribunal that both the letting agent and the Respondent were made aware of the breach in early 2021 but no action was taken to lodge the deposit.
19. The Respondent confirmed that she was admitting the breach. She had lodged a deposit in an approved scheme in May 2023. This was not a deposit that was returned to her but from her own funds. She noted that she had lodged payment records from Puffin Properties which did not show any payment of the deposit to her. She does not know what Puffin Properties did with the deposit.
20. The Tribunal was satisfied that a breach occurred and that it was appropriate to issue a one times the deposit penalty.

Findings and reason for decision

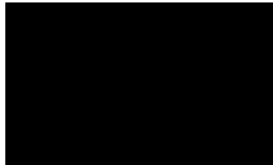
21. A Short Assured Tenancy commenced 29th March 2017. The tenancy ended on 15th June 2023.
22. A deposit of £500 was paid on 29th March 2017 to the Respondent's letting agent, Puffin Properties. It is unknown what Puffin Properties did with the deposit as it was not lodged in an approved deposit scheme by them and the Respondent was not notified about what was done with the deposit.
23. The deposit was lodged with Safe Deposit Scotland on 22nd May 2023 which is outwith 30 days from the start of the tenancy. This is a breach of the regulations.
24. The Respondent has failed to comply with the regulations to ensure that the deposit was lodged in an appropriate scheme within 30 days from the start of the tenancy. Even though the deposit was taken by the letting agent it remains the legal obligation of the Respondent to ensure that the deposit has been lodged within an approved scheme. The Respondent has engaged with the Tribunal process and placed a deposit in an approved deposit scheme.

Decision

25. 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, lodged a deposit from her own money into a deposit scheme, has admitted the breach and is to sell the Property. The Tribunal decided that a fair, just and proportionate sanction would be to order the Respondent to pay the Applicant one times the amount of the deposit £500.00 (FIVE HUNDRED 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.



13th September 2023

Legal Member/Chair

Date