



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

Chamber Ref: FTS/HPC/PR/20/1455

Re: Property at 4/8 New Johns Place, Edinburgh, EH8 9XH (“the Property”)

Parties:

Ms Monisha Edirisooriya, 90 Brookfurlong, Peterborough, Cambridgeshire, PE3 7LQ (“the Applicant”)

And

Southside Property Management, 20 Nicolson Street, Edinburgh, EH8 9DH (“the Respondents”)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondents have not breached their obligations under regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Background

1. The respondents are a letting agency. The applicant was the tenant of a property managed by the respondents. On 1 July 2020 the applicant submitted form G and argues that the respondents breached the Tenancy Deposit Schemes (Scotland) Regulations 2011.

The Case Management Discussion

2. A Case Management Discussion took place before the Tribunal by telephone conference at 10.00am on 2 October 2020. The Applicant was not present, but she was represented by Stephen Craig. The respondent was represented by Emma Ewen. Both the applicant and the respondent submitted detailed written submissions. Mr Craig and Ms Ewen agreed that there is no dispute about the facts in this case. I can dispose of this case today, without the need for a further hearing.

Findings in Fact

3. The respondent is a letting agent and acts for the owner of the property at 4/8 New Johns Place, Edinburgh ("the property"). The respondent has disclosed only the name of their client and have designed him as care of the respondent's address in all of their dealings with the applicant. Throughout this application, the respondent has not disclosed their client's full details. The respondent is therefore an agent acting for an undisclosed principal and accepts liability for their client's actions in his dealings with the applicant.

4. Acting on their client's instructions, the respondents let the property to Stuart Reid and Laura MacDonald ("the original tenants") in 2018. When the original tenants took entry to the property, they paid a tenancy deposit of £945. The respondents lodged that money Letting Protection Service Scotland ("LPS"), an approved deposit scheme, on 24 May 2018.

5. On 12 July 2019 a tenancy swap was agreed between the original tenants that the applicant and her cotenant. In an agreement entitled "*tenancy swap mandate*" signed by the original tenants and this applicant on 12 July 2019, the applicant and her cotenant agreed to pay a sum equivalent to the deposit funds to the original tenants.

6. The applicant and her cotenant took entry on 12 July 2019. A private residential tenancy agreement was signed by the applicant and her cotenant on 12 July 2019. On 12 July 2019 the respondent acknowledged receipt of a letter from the respondent providing the information required by regulation 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

7. The tenancy ended on 15 April 2020. On that date the applicant vacated the property. The tenancy deposit funds due to the applicant were released to the applicant in May 2020.

8. Between 24 May 2018 and 21 May 2020. LPS held the deposit funds with the correct details for the landlord and the property address, but with the details of the original tenant rather than the applicant. The respondent failed to notify LPS of the change in tenancy in July 2019, so that LPS was entirely unaware of the applicant until 21 May 2020.

9. The respondent had no intention of depriving the applicant of repayment. LPS have already determined the division of the deposit between the parties and paid the funds due to the applicant on 27 May 2020.

Reasons for Decision

10. Parties' agents agreed that the first question for me was whether or not there has been a breach of the regulation 3 of the 2011 Regulations. If I find there has been a breach, parties' agents accepted that I must make a payment order and they were content to leave it to me to quantify any payment order.

11. In her application, the applicant says that the respondent failed to pay the deposit funds into an LPS account until after the lease expiry date. On the agreed facts in this case, that is not correct. The deposit funds have rested with an approved deposit scheme since May 2018.

12. In her written submission dated 30 September 2020 the applicant draws a clear focus in this case, and accepts that the deposit funds were lodged in an LPS account, but the funds were

not held under *my name*... until after our tenancy expired.

13. The respondent, in their written submission dated 21 September 2020, accepts

That due to an “admin error” the tenants’ names were not changed following on the tenancy swap until after the tenancy ended.

14. The respondent’s position is that there has been no breach of the 2011 Regulations because the deposit funds were protected throughout the duration of the tenancy.

15. Regulation 9 of the 2011 Regulations defines this tribunal’s jurisdiction.

A tenant who has paid a tenancy deposit may apply... for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

16. Regulation 3 of the 2011 Regulations, says

Duties in relation to tenancy deposits

3.—(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—

(a) pay the deposit to the scheme administrator of an approved scheme; and

(b) provide the tenant with the information required under regulation 42.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

(a) in respect of which the landlord is a relevant person; and

(b) by virtue of which a house is occupied by an unconnected person,

unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.

17. On the agreed facts in this case, the respondent complied with the requirements of regulation 3 (1)(a) of the 2011 Regulations. The question for me is whether or not the failure to inform LPS of the change in tenants in July 2019 is a breach of regulation 42 of the 2011 Regulations.

18. Regulation 42 of the 2011 Regulations relates to the Landlord’s duty to provide information to the tenant, and says

42.—(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).

(2) The information is—

(a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;

(b) the date on which the tenancy deposit was paid to the scheme administrator;

(c) the address of the property to which the tenancy deposit relates;

(d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;

(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and

(f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.

(3) The information in paragraph (2) must be provided—

(a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or

(b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.

19. On the facts as I find them to be, all of that information was provided to the applicant in a letter from the respondent which the applicant acknowledged receipt of on 12 July 2019.

20. In her written submission dated 30 September 2020, the applicant argues that the respondent breached regulation 43 of the 2011 Regulations, and in so doing prevented LPS from adhering to regulations 21 & 22 of the 2011 Regulations. Regulation 9 limits the jurisdiction of this tribunal to considering regulations 3 and 42 of the 2011 Regulations.

21. Regulation 43 is in simple terms

Duty to provide updated information

43. Where information required to be provided by the scheme administrator under regulation 22 or by the landlord under regulation 42 becomes inaccurate the person required to provide that information must ensure that revised information is provided.

22. There is no time limit specified in regulation 43. On the agreed facts in this case. The respondent made a mistake and the information was provided to the scheme administrator only after the tenancy ended, but the information was provided to the scheme administrator, and as a result funds were released to the applicant.

23. In any event this tribunal considers regulation 42, not regulation 22, and the regulation 42 information was correctly given to the applicant on 12 July 2019.

24. It is agreed that there was no breach of regulation 3 (1)(a). The agreed facts in this case tell me that the respondent did not breach regulation 42. The applicant's claim crystallises in the second sentence of the submission dated 30 September 2020. The deposit funds were not held in the applicant's name until 21 May 2020. That is not a breach of regulation 3 of the 2011 Regulations, and so is not something for which this tribunal can competently make a payment order.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) dismisses the application.

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.

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Legal Member

2 October 2020