



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/20/1762

Re: Property at 2/2 Sinclair Close, Edinburgh, EH11 1US (“the Property”)

Parties:

Mr Dylson Oliviera, residing at 4/11 Newton Street, Edinburgh, EH11 1TF, Mr Henry Oliver, residing at 9 Oak Park, Bishopbriggs, G64 1 UB and Mr Shaun Whitley, residing at 4/11 Newton Street, Edinburgh EH11 1TF (“the Applicants”)

And

Mr John Morrison, residing at 20 Victoria Terrace, Dunfermline, KY12 0LZ (“the Respondent”)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has breached his obligations under regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Background

1. On 1 June 2018 the respondent let to the applicants the property at 2/2 Sinclair Close, Edinburgh, EH11 1US. A Tenancy agreement was entered into which required payment of a deposit of £1295.00. The tenancy ended when the applicants vacated the property on 31 May 2020.

The Case Management Discussion

2. A Case Management Discussion took place before the Tribunal by telephone conference at 11.30am on 15 October 2020. The Applicants were all present. They elected Mr Oliver to speak for all three applicants. The respondent was present. none of the parties were represented.

3. All parties have made detailed written submissions, which discuss their differences of opinion about the condition the property was in when the applicants vacated the property. The limits of this tribunal's jurisdiction, and the relevant sections of the 2011 regulations, were explained to parties, who then willingly focused on the relevant facts for this case management discussion.

4. All parties agree that the deposit was not lodged with an approved tenancy deposit scheme within 30 days of commencement of the tenancy. Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 tells me that, in light of that admitted fact, I must make a payment order against the respondent. I can dispose of this case today, without the need for a further hearing.

Findings in Fact

5. In June 2018 the respondent agreed to let the dwelling-house at 2/2 Sinclair Close, Edinburgh, EH11 1US to the applicants. A tenancy agreement was entered into setting out the agreed rental and requiring a deposit of £1295.00.

6. Before taking entry the Applicants paid a deposit payment of £1295.00 to the respondent. The respondent placed that money in an account in his name alone. Parties' agreed to end the tenancy on 31 May 2020. The deposit funds were not placed into an approved scheme until 19/08/2020 – approximately 2½ months after the tenancy ended.

7. At the termination of the tenancy the parties could not agree on the amount of deposit which should be repaid to the applicants. It was only then that all parties realise that the funds had not been paid into an approved deposit scheme. The respondent immediately placed the funds with Secure Deposits Scotland ("SDS"). The respondent told SDS that the tenancy started on 1 June 2018 so that it was clear that the money was paid into an approved scheme long after the 30th day of the tenancy.

8. The dispute about division of the deposit funds between the parties has been referred to arbitration. The respondent had no intention of depriving the applicants of repayment.

9. Soon after the tenancy started the respondent became unwell. He suffered from stress and anxiety and was unable to work for 9 weeks. He was required to work overseas for one month, and ultimately lost his employment.

10. This is the only property the respondent rents out. He did not take legal advice when entering into the tenancy agreement. He has not yet relet the property.

Reasons for Decision

11. It is beyond dispute that a deposit of £1295.00 was paid at the commencement of the tenancy. On the facts as I find them to be, the deposit was only paid into an approved scheme after the tenancy ended.

12. The respondent acknowledges his error. The respondent has no history of breaches of the 2011 Regulations. A full accounting for the deposit has been made. The respondent became unwell soon after the tenancy agreement commenced. Against those mitigating factors I must balance the undisputed fact that the deposit was unprotected throughout the tenancy.

Reasons for Decision

13. It is beyond dispute that a deposit of £1295.00 was paid at the commencement of the tenancy. On the facts as I find them to be, the deposit was not paid into an approved scheme. The respondent has not acted dishonestly. He describes his error as “a mistake” and acted correctly as soon as he realised his error.

14. The Applicants ask me to make a payment order. The purpose of the order is not to enrich the applicants. The purpose of the order is to punish the respondent; to mark society’s displeasure; to protect society and to ensure the enforcement of the 2011 Regulations in the future.

15. The amount of deposit was £1295.00. A payment order equivalent to the value of the deposit reflects the seriousness of the breach of the 2011 Regulations.

16. The appropriate level of payment order is £1295.00

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant of One Thousand Two Hundred and Ninety-Five pounds (£1295.00) within 14 days of service of this order.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Legal Member **Paul Doyle**

15 October 2020