



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

Chamber Ref: FTS/HPC/PR/20/0208

Re: Property at 3/1, 37 Minerva Way, Glasgow, G3 8GF (“the Property”)

Parties:

Mr Ross Clark, Mr Jack Hughes, Mr Ben McGeachie, Mr Calum McGonigal, 26 The Meadows, Falkirk, FK2 8QD; Anchor House, 18 High Street, Aberlady, East Lothian, EH32 0RE; 3/2, 40 Gardner Street, Glasgow, G11 5DE; 2 Dochart Crescent, Polmont, FK2 0RE (“the Applicants”)

Ms Nosheena Alam, 3/1, 37 Minerva Way, Glasgow, G3 8GF (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants were entitled to an order for payment by the Respondent in the sum of £2000.00.

Background

1. By application dated 17 January 2020 and received by the Tribunal on 21 January 2020 the Applicants applied to the Tribunal for an order for payment in respect of an alleged breach by the Respondent of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicants submitted a copy of the Tenancy Agreement and copy emails in support of the application.
2. By Notice of Acceptance dated 10 March 2020 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.

3. A Case Management Discussion was held by teleconference on 3 September 2020 and was adjourned to a further Case Management Discussion for service of the case papers on the Respondent.
4. The Respondent submitted written submissions by email on 14 September 2020. The Applicants submitted written submissions by email on 15 September 2020.

The Case Management Discussion

5. A Case Management Discussion was held by Teleconference on 13 October 2020. Mr Ross Clark attended on behalf of the Applicants. The Respondent attended personally and was represented by Mr Shaheed Pervez of Apex Property Services (Scotland) Limited.
6. The Tribunal considered the submission by the Respondent that the application was time barred as although it had been submitted to the Tribunal by the Applicants on 21 January 2020 and therefore within the three month period provided in the 2011 Regulations it had not been accepted by the Tribunal until 10 March 2020 and the Applicants were still providing documents to the Tribunal in February 2020 which was outwith the prescribed period. The Tribunal was satisfied that the documents submitted with the application met the requirements of Rule 103 of the first-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”) and that in terms of rule 5 the application was timeous.
7. It was agreed between the parties that there was a Private Residential Tenancy Agreement that had been prepared by the Respondent’s representatives Apex Property Services (Scotland) Limited and that the tenancy commenced on 30 July 2018 and ended on 31 October 2019. It was also agreed that a deposit of £1800.00 had been paid by the Applicants to the Respondent at the commencement of the tenancy.
8. There was some discussion as to whether the tenancy was intended to run in the name of all four Applicants or only in the names of Mr Clark and Mr McGeachie although it was accepted that the Respondent’s representatives had been advised in advance of the tenancy of the names of all four of the Applicants that would be residing in the property.
9. The Respondent accepted that she had not paid the deposit into a Tenancy Deposit Scheme within the prescribed period of 30 working days. The Respondent thought it might have taken her six or seven months to lodge the deposit. The Tribunal queried if the Respondent had any correspondence to confirm the date the deposit was lodged as it appeared from the correspondence submitted by the Applicants that Safe Deposits Scotland had written to Mr McGeachie on 6 August 2019 to confirm that the deposit was now held by them. The Respondent had no further documents that disclosed an earlier date of lodging the deposit.

10. The Respondent explained that she had been unaware of the need to lodge the deposit in a scheme until a friend told her that it was necessary. The Respondent said she had not previously rented out property long term having only done Bed and Breakfast and Airbnb in the past and these did not require deposits to be lodged in a scheme. The Respondent said she did not rent out any other properties and was currently renovating the property and was living there herself. She was no longer renting it out.
11. Mr Clark submitted to the Tribunal that although the Respondent had said she had been unaware of the requirement to lodge the deposit in an approved Tenancy Deposit Scheme, the Tenancy Agreement which the Respondent had signed made reference to the deposit being lodged in a scheme and he presumed the Respondent would have read the agreement before signing it.
12. The parties were in agreement that the Tribunal did not require any further information to allow it to make a determination of the application and that a hearing would not be necessary.

Findings in Fact

13. The parties entered into a Private Residential Tenancy that commenced on 30 July 2018 and ended on 31 October 2019.
14. The monthly rent was £1800.00 per calendar month.
15. The Applicants were the tenants.
16. The Applicants paid the Respondent a deposit of £1800.00 at the commencement of the tenancy.
17. The deposit was lodged with Safe Deposits Scotland in about the beginning of August 2019
18. The Respondent does not rent out any other properties.

Reasons for Decision

19. The Tribunal was satisfied from the submissions both oral and written that there was a Private Residential Tenancy formed between not just the two Applicants who had signed the tenancy agreement but all four Applicants who had resided in the property as the Respondent's representatives had been aware of the names of the occupants prior to drawing up the tenancy agreement. It is not for the Tribunal to speculate as to why the agreement did not include the names of all four Applicants but it did note that it appeared the property was not said to be an HMO. It was a matter of agreement that the deposit of £1800.00 had been paid by the Applicants to the Respondent and that it had not been lodged within an approved scheme within the prescribed period.

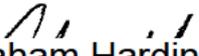
20. The Tribunal was satisfied that there had been a breach of Regulation 3 of the 2011 Regulations as the deposit was not lodged with Safe Deposits Scotland within 30 working days and the prescribed information required by Regulation 42 had not been provided by the Respondent.
21. The Tribunal was satisfied that the Applicants had complied with Regulation 9 of the 2011 regulations as they had submitted the application to the Tribunal within three months of the end of the tenancy and had complied with the terms of Rule 103 of the 2017 Rules.
22. Regulation 10 provides that the Tribunal must order the Respondent to pay an amount not exceeding three times the amount of the deposit if it finds that the landlord did not comply with any duty in Regulation 3.
23. The Tribunal is required to exercise its discretion in determining the level of penalty to impose. The Tribunal was satisfied that the Respondent was not what could be considered a professional landlord and the failure to lodge the deposit timeously came about as a result of her lack of knowledge. It did not appear to the Tribunal that there had been a wilful disregard for the regulations and on being made aware of the requirement to lodge the deposit the Respondent took the necessary steps to have the deposit protected.
24. However, the Applicants' deposit remained unprotected for a year and that could have had serious consequences for the Applicants. Furthermore, if a landlord wishes to rent out a property then it is incumbent upon them to not only take steps to become a registered landlord but also to familiarise themselves with all the applicable legislation. It was apparent to the Tribunal that in this regard the Respondent's actions were inadequate.
25. Given all the circumstances the Tribunal concluded that whilst a default of this sort was a serious matter, the failure was not at the most serious end of the scale such as would merit the maximum sanction of three times the deposit. In determining what would be a fair, proportionate and just sanction the Tribunal considered that an award of somewhat more than one times the deposit would reflect the serious nature of the breach but at the same time take account of the inexperience of the Respondent and the fact that ultimately the deposit was placed within a scheme thus allowing the Applicants to make use of the scheme's dispute resolution provisions. In all the circumstances an award of £2000.00 was an appropriate amount to order the Respondent to pay to the Applicants.

Decision

26. The Tribunal finds the Applicants entitled to an order for payment by the Respondent in the sum of £2000.00

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.


Graham Harding



Legal Member/Chair

____13October 2020
Date