



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/20/0259

Re: Property at 81/11 Gorgie Road, Edinburgh, EH11 2LA (“the Property”)

Parties:

Mr Ryan Morrison, 33 Longstone Street, Edinburgh, EH14 2BS (“the Applicant”)

Mr Simon Crunden, 13 Greenbank Gardens, Edinburgh, EH10 5SN (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member)

Decision

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

- 1. The Respondent must pay the deposit (£750) in to an approved scheme in terms of regulation 10(b)(i) of the Tenancy Deposit Schemes (Scotland) Regulations 2011, and**
- 2. The respondent must pay to the Applicant the sum of £1500, representing twice the amount of the deposit.**

Background

The Applicant lodged an application with the Tribunal on 28th January 2020 under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 “the Procedure Rules”), seeking an order in relation to the Respondent’s failure to lodge his deposit in a Tenancy Deposit Scheme in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Lodged with the Application were:

1. Copy Tenancy Agreement

On 2nd August 2020 the Respondent lodged written submissions together with photographs and receipts in relation to damage which he alleged had been caused by the Applicant prior to him vacating the property.

The Applicant lodged a response to those written submissions refuting the allegations.

Case Management Discussion

The CMD took place by teleconference. Both parties dialled in.

The Chairperson had each party introduce themselves and explained the purposes of a CMD in terms of Rule 17. She made it clear that if she had sufficient information she could make a final decision at the CMD. She confirmed with each party that they understood.

The Chairperson explained that the application being dealt with was in relation to failure to lodge a deposit in an approved scheme in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011. She explained that she could not deal with any allegations of damage, as that was the job of the approved scheme, and the allegations made by the Respondent were irrelevant. Both parties confirmed that they understood.

The parties agreed that the deposit amount was £750, and that the sum was still held by the Respondent.

The Chairperson read through the Respondent's statement and had him confirm the relevant parts which were that he bought the property in 2006, lived in until 2008, at which point he moved to London and has rented it to a succession of tenants for the last 12 years. He confirmed that he was not aware of the legal requirement to lodge a deposit, but now that he is he has lodged his current tenant's deposit, and he has produced along with his written submission a receipt to prove it. He confirmed that he has always had a good relationship with his tenants and has always returned deposits in full. The Chairperson asked if he anything else to add to his submissions, and he said that he did not.

The Chairperson confirmed with the Applicant that he understood that his written response was not necessary as the issue of damage was not one on which the tribunal could decide today. He confirmed that he did. He had nothing further to add.

The Chairperson told the parties that she had decided that in terms of Regulation 10(b)(i) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 she was going to order that the Respondent paid the deposit in to a scheme, and that the scheme could then adjudicate on the matter of damage.

The Chairperson explained that her next function was to decide on the level of the award. The Chairperson asked the Respondent about the tenancy agreement and how it had been prepared. He said that he had found a boilerplate agreement on a landlord's website when he began renting and had used it ever since. Given that this appeared to be for a "shorthold tenancy" the Chairperson asked him what steps he took to keep himself up to date with changes in the legislation. He said that he did not really take any. The Chairperson asked him if he was aware of the changes to tenancy agreements, applicable from 1st December 2017, brought in by the Private Housing (Tenancies) (Scotland) Act 2016. He said that he was not.

The Chairperson decided, in terms of Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 to make an award of two times the deposit amount.

Findings In Fact

1. The parties entered in to an assured tenancy agreement in relation to the property;
2. The Respondent received payment from the Applicant of a deposit in the amount of £750;
3. The Respondent did not place the deposit in an approved tenancy deposit scheme as required by Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011;
4. The Respondent rented out only one property;
5. The Respondent did not keep himself up to date with changes in the legislation in relation to property rental in Scotland.

Reasons For Decision

The Chairperson considered that the Respondent's breach was serious, but not at the top end of the scale. He had one rental property only. If he had had several rental properties for which the deposits were not secured that would be at the higher end. However, the Respondent admitted that he had rented out the property for 12 years without securing any of the deposits. The Applicant's deposit had been unprotected for nearly a year. He admitted that he did not keep himself up to date with legislation changes and was not aware of the new tenancy regime. The Chairperson considered this lack of regard to be serious enough to merit an award of two times the deposit.

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.

A. Kelly

Legal Member/Chair

13th August 2020

Date