



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

Chamber Ref: FTS/HPC/PR/20/0299

Re: Property at 0/2 26 Havelock Street, Glasgow, G11 5JA (“the Property”)

Parties:

Miss Mutsa Chinembiri, Miss Miriam Hussain, Miss Elsie Too, 0/2 26 Havelock Street, Glasgow, G11 5JA (“the Applicant”)

Mr Anis Ahmad, Mrs Karim Ahmad, 92 Mitre Road, Glasgow, G14 9PH (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of THREE HUNDRED POUNDS (£300.00) STERLING be made in favour of the Applicants.

1. Background

1.1 This is an application under rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) whereby the Applicants sought an order for payment of up to three times the deposit as a result of a breach of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”).

1.2 The Applicant was accompanied by a copies of the written tenancy agreement between the parties and correspondence from Safe Deposits Scotland.

1.3 The Respondent lodged a submission by email dated 7 August 2020.

2. The Case Management Discussion

- 2.1 The Case Management Discussion took place on the 14 August 2020 by way of teleconference. Miss Chinembiri and Miss Too attended as Applicants. Mr Ahmad and Mrs Ahmad attended as Respondents. None of the parties were represented.
- 2.2 There were no further documents to be lodged by any of the parties. Following canvassing by the Tribunal, all parties were in agreement that the application concerned a relevant tenancy within the meaning of Regulation 3 of the 2011 Regulations, the tenancy had commenced on 7 October 2019, that a deposit totalling £600.00 had been taken from the Applicants, that this deposit was subject to the duties contained within Regulation 3 of the 2011 Regulations and that the deposit had been lodged with Safe Deposit Scotland on 9 January 2020, being out with the prescribed period in terms of the 2011 Regulations.
- 2.3 The Tribunal was of the opinion that, given the lack of any factual dispute between the parties, that the application could be determined without a hearing as provided for by Rule 18 of the Rules. Accordingly, the Tribunal went on to hear from the parties as to whether any order should be granted and, if so, what level of sanction should be applied given the accepted breach of the 2011 Regulations.
- 2.4 Miss Chinembiri advised she was the only one of the Applicants still residing at the property. The others had vacated the property. She had only become aware of the deposit having been lodged with Safe Deposits Scotland following receipt of the letter from them dated 10 January 2020. She advised that there had been a lack of communication from the Respondents regarding the deposit and this was indicative of the informal approach taken by the Respondents to their role as landlords. Miss Too confirmed that she had left the property and considered her interest in the property to be terminated. She agreed with the submission of Miss Chinembiri in respect of the lack of communication. She had not requested the release of her portion of the deposit following the ending of her interest in the tenancy agreement.
- 2.5 Mrs Ahmad made submissions for the Respondents. She confirmed that two other tenants now occupied the property along with Miss Chinembiri. She apologised for the late lodging of the deposit and advised that this was not done deliberately or out of malice. She advised that the deposit had been taken in cash and held in a drawer within her home. She was aware of the duties in respect of the deposit but had forgotten to lodge the deposit as a result of personal matters occurring late last year, including illness suffered by her husband, Mr Ahmad. She was prompted to lodge the deposit when discovering it in the drawer when attending to other matters. She believed that the communication that would be issued by Safe Deposits Scotland to the Applicants was sufficient in terms of information regarding the deposit. The property was the only property which the

Respondents let. They had done so for between 8 and 10 years. They did not use a letting agent and did not usually take a deposit. The Respondents had sought to assist the Applicants who had left the property by allowing them to terminate the tenancy without the expected notice and replacing them with new tenants. The deposit was to be returned to the Applicants who were no longer tenants at the property.

3. Reasons for Decision

3.1 In terms of the 2011 Regulations:-

“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.

(1A) Paragraph (1) does not apply—

(a) where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and

(b) the full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord, within 30 working days of the beginning of the tenancy.

(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.

(2A) Where the landlord and the tenant agree that the tenancy deposit is to be paid in instalments, paragraphs (1) and (2) apply as if—

(a) the references to deposit were to each instalment of the deposit, and

(b) the reference to the beginning of the tenancy were to the date when any instalment of the deposit is received by the landlord.

(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. ...

9.—

(1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made no later than 3 months after the tenancy has ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(b) may, as the First-tier Tribunal considers appropriate in the circumstances of the application, order the landlord to— (i) pay the tenancy deposit to an approved scheme; or (ii) provide the tenant with the information required under regulation 42.”

3.2 In terms of the present application, it was a matter of agreement that the deposit taken by the Respondents had not been lodged until 9 January 2020, out with the prescribed period. Regulation 10 of the 2011 Regulations requires the Tribunal to make an order for payment where there has been such a breach. The only discretion afforded to the Tribunal is the level of sanction imposed, with the maximum being £1800.00.

3.3 The Tribunal approached this matter as an exercise of judicial discretion. It was not bound to afford any or more weight to any particular factor, but what was fair and just in the circumstances. The Tribunal accepted the submission by Mrs Ahmad that the late lodging of the deposit had been an honest mistake. The Respondents could not be described as commercial landlords, only having the one property available for let. There had been little prejudice to the Applicants given that the period during which the deposit was unprotected, in breach of the 2011 Regulations, could be best measured in weeks. It had subsequently been lodged whilst the tenancy was ongoing. There had been no effort by the Respondents to retain any part of the deposit. In the opinion of the Tribunal, the most serious aspect of the breach was the admission that the deposit had been held in cash within the Respondent's home for the period when the Applicants could have expected it to be protected within a scheme. Accordingly, the Tribunal was of the belief that the breach was relatively minor and that this was reflected in the sum awarded to the Applicants.

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.

14 August 2020

Legal Member/Chair

Date