



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

Chamber Ref: FTS/HPC/PR/20/0524

Re: Property at 20 Woodburn Avenue, Balloch, Dunbartonshire, G83 8AS (“the Property”)

Parties:

Ms Wendy Richmond, 9 Westcliff, Dumbarton, G82 5DD (“the Applicant”)

Miss Kathryn Brownlee, 3C Miller Road, Balloch, Dunbartonshire (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member), Melanie Booth (Ordinary Member) and Sara Hesp (Ordinary Member [Reviewer])

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent did not comply with the duty in Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 to pay the deposit to the scheme administrator of an approved scheme and ordered the Respondent to pay the Applicant the sum of Three Hundred Pounds only.

BACKGROUND

1. This was a hearing to consider an application under Rule 103 for an order under Section 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011. (2011 Regulations).
2. The following was lodged along with the application:-
 - A copy of the Tenancy Agreement dated 7th April 2015
 - A copy of text messages between the Respondent and Applicant regarding termination of the tenancy and repayment of the Deposit
 - A copy receipt showing the sum of £900 paid on 22nd April 2015.

- Certificate of deposit from Safe Deposit Scotland dated 6th November 2019
3. The Applicant in her application was seeking her deposit returned with compensation.
 4. A Case management discussion was held on 19th August 2020 in which both the Applicant and Respondent participated. At the CMD the following facts were confirmed:-
 - a. The Respondent entered into a lease with the Applicant whereby the Applicant leased the Property from the Respondent from 22nd April 2015 until 3rd January 2020
 - b. The deposit paid by the Applicant to the Respondent was £450 and it was paid on 22nd April 2015.
 - c. The Deposit was lodged with Safe Deposits Scotland on 6th November 2019.
 - d. The Applicant was not at any time given information about where her deposit had been placed.
 - e. The majority of the deposit has been returned to the Applicant after a claim by was adjudicated on by Safe Deposits Scotland
 5. At the CMD the Respondent indicated that she had wished to lodge medical evidence from her Doctor of her state of mental health at the time the tenancy was entered into thereafter. The legal member advised the parties that the Regulations make it clear that breach of the Regulations which require all deposits to be placed within one month in a recognised tenancy deposit scheme is a strict liability. That the Tribunal (formerly the Sheriff) “must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.” The legal member explained that as the facts regarding the deposit not being lodged in time were not in dispute it was a matter of deciding what penalty should be awarded. Given the Applicant had no objection to an adjournment for the Respondent to lodge evidence, the Legal Member agreed that in the circumstances it would only be fair and just to adjourn the CMD to a Hearing to allow further evidence to be lodged by the Respondent.
 6. A Hearing was fixed for 10 am on 8th October 2020

The Discussion

7. Both the Applicant and the Respondent participated in the Hearing which took place via conference call due to the requirement for social distancing due to the Covid 19 pandemic. Neither party was represented. The legal member explained the purpose and manner of the Hearing and confirmed that the purpose of the hearing was to consider the application for a penalty in respect of the failure to lodge the tenancy deposit timeously in a tenancy deposit scheme. There was one observer at the Hearing namely a member of the Tribunal who was there to appraise the ordinary member.
8. The parties both agreed the facts that had previously been established namely that they had entered into a lease of the Property from 22nd April 2015 until January 2020; that the deposit of £450 had been paid to the Respondent as Landlord at the start of the lease but not lodged in a tenancy deposit scheme until 6th November 2019; that the return of the deposit had been

disputed and after adjudication the majority of the deposit was returned to the Applicant.

9. Applicant confirmed that she had enjoyed living in the property, and that up until she was leaving had enjoyed an amicable relationship with the Respondent. She advised that she wished it had not come to this but that she felt that when the landlord had initially challenged her request for the return of the deposit she felt she had no option but to raise this.
10. She advised that it was only when she received the certificate of deposit showing it had been lodged with Safe Deposit Scotland on 6th November 2019 that she realised it had not been lodged within the time it should be. She confirmed she had not been fully aware of these regulations. The Applicant then advised that she raised this with the Landlady mentioning that it should have been paid within 30 days of the lease being entered into.
11. The Applicant confirmed that until the end of the lease she had enjoyed a good relationship with her landlord and the landlord had told her she was a great tenant. The Applicant confirmed in the papers submitted with the application that she had moved out on 31st December but her notice expired on 3rd January.
12. The Applicant confirmed in response to questions that she had found out about the tenancy being available from her son who had been the previous tenant and who was leaving it. She also confirmed that she loved living in the property had not had been issues which required addressed but when there had been an issue the landlady had been responsive and attended to matters.
13. The Respondent was then asked for her comments and the Respondent confirmed the following was agreed:-
 - a. That she had let out the Property to the Applicant from April 2015 to the start of January 2020.
 - b. That the deposit had not been lodged in time
 - c. That the deposit was £450 and had been paid by the tenant on 22nd April 2015
14. The Respondent advised that her mental health had been very fragile at the time the tenancy started and she was not thinking logically, and that she was avoiding making decisions. She has lodged medical evidence dated 8th April 2015 and 16th August 2016 which are referred to for their terms and which confirm she was experiencing at the time of the lease being entered into and thereafter significant health issues. She went on to say that she continued to need support and assistance with this for some time, mentioning that 2019 was a better year for her.
15. The Respondent also confirmed that she had enjoyed a good relationship with the tenant and wished it had not come to this. She advised that she did not use an agent to manage her property which is the only one she rents out and she finds the legislations which she tends to see online to be confusing.
16. The Respondent confirmed that it was when the tenant asked if the landlord could evict her that she was looking at the grounds for eviction and also noticed the duties in regard to tenancy deposits. She confirmed she then arranged for the deposit to be placed with a tenancy deposit scheme and confirmed that this allowed the tenant the protection for the end of the tenancy and resulted in an adjudication of the return of the deposit.
17. The Respondent is clearly not happy at the result of the adjudication and tried to bring up evidence regarding this but the Tribunal advised that whilst it

appreciated the parties had differing views on this matter, this was not relevant to the determination of this application.

18. The Respondent also confirmed in response to questions :-
- a. that she was not aware of the regulations until November 2019 when looking up information for the tenant leaving the Property;
 - b. that she only let out this one property and did not use a letting agent
 - c. that she tried to be a good landlord and dealt with any issues raised
 - d. that when the tenant asked if she could be evicted the landlord looked up information on the internet and found out rules about eviction which allowed her to serve a notice to leave as she had a family member who wanted to live in the Property.
 - e. That the relationship with the tenant broke down when the tenant did not leave and it meant she lost a new tenant.
 - f. That the property has since been rented out and the new deposit is currently lodged in a deposit scheme.
 - g. That she has not attended any training courses for landlords because of her mental health

• Findings in Fact

19. The Respondent entered into a lease with the Applicant whereby the Applicant leased the Property from the Respondent from 22nd April 2015
20. The rent due was £450 per month.
21. The deposit paid by the Applicant to the Respondent was £450.
22. The tenancy continued from 22nd April 2015 until 3rd January 2020
23. The Applicant was not at any time given information about where her deposit had been placed.
24. The Applicant raised an application for payment of an order under Rule 9 of the Regulations on 5th February 2020
25. The Deposit was placed in an approved scheme on 6th November 2019
26. The Deposit was adjudicated on by Safe Deposit Scotland and the majority of it returned to the Applicant.

Reasons for Decision

27. The Tribunal found that the Respondent has failed to comply with the duty set out in Section 3 of the 2011 Regulations by failing to place the deposit in an approved scheme within 30 days of the beginning of the tenancy.
28. That in terms of Section 10 of the 2011 Regulations the Tribunal is obliged to make an order that the landlord pay the tenant an amount not exceeding three times the amount of the tenancy deposit.
29. The parties are not in dispute that the deposit of £450 made by the Applicant to the Respondent was not lodged timeously within the required 30 days and in fact was not lodged for four and half years after the tenancy started. The certificate from Safe Deposit Scotland confirms it was lodged on 6th November 2019 and the parties agree it was paid at the start of the tenancy. The text messages from the parties lodged with the application confirm the end date of the tenancy was 3rd January therefore this application is competently made.

30. The Tribunal has to consider what penalty is appropriate and in doing so has considered the mitigating circumstances the Respondent has put forward, namely that she was suffering from a serious illness at the time the tenancy was entered into and thereafter on an ongoing basis; that when she did realise there was a duty to lodge the deposit that she took steps to lodge the deposit straight away and this has allowed a dispute over the return of the deposit to be adjudicated on.
31. The Tribunal has to weigh that up along with the position that a responsible landlord should know that all deposits require to be lodged in an authorised scheme. The Regulations have been in force since 2011 although the landlord appears not to have known this. The requirement is there so that the Tenant has her deposit protected and that at the end of the tenancy if there is any dispute she can avail herself of the independent dispute adjudication service offered by the statutory deposit schemes.
32. The Tribunal finds that this was not a deliberate attempt to avoid placing the deposit but more one of ignorance, compounded with poor health which has led to an avoidance of dealing with or finding out about all of a Landlord's responsibilities. The Landlord has placed the Applicant's deposit into a tenancy deposit scheme after she discovered her responsibilities however the deposit was unprotected for a lengthy period of time and she has not taken time to find her responsibilities until November 2019, although this is at least partly due to her health issues.
33. Weighing up all these factors the Tribunal considers that an appropriate penalty should be at the lower end of the scale and determines that an amount of two thirds of the deposit is reasonable and appropriate.

- Decision

The Tribunal awards the sum of Three hundred pounds as a penalty for failure to lodge the deposit in a tenancy deposit scheme within 30 days.

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.

J Todd

Legal Member/Chair

8th October 2020

Date

