



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/20/0554

Re: Property at 6 Killearn Crescent, Plains, Airdrie, ML6 7UR (“the Property”)

Parties:

Miss Gemma Best, Mr Christopher Lucock, 6 Killearn Crescent, Plains, Airdrie, ML6 7UR; 6 Killearn Crescent, Plains, Airdrie, ML6 7UR (“the Applicants”)

Mr Clive Aronson, 28 Ayr Road, Giffnock, Glasgow, G46 6RY (“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 SEVEN HUNDRED POUNDS (£700.00) 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 application was accompanied by a copies of the written tenancy agreement between the parties, a letter from North Lanarkshire Council and email correspondence between the Applicants and the operating deposit schemes.
- 1.3 The Respondent lodged submissions by email dated 31 July 2020 and 4 August 2020.

2. The Case Management Discussion

- 2.1 The Case Management Discussion took place on the 14 August 2020 by way of teleconference. Mr Lucock attended as an Applicant. Mr Aronson attended as the Respondent. Neither 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 20 October 2017, that a deposit totalling £1000.00 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 My Deposits Scotland on 11 February 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 material 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 Mr Lucock advised the Applicants continued to reside at the property. When the tenancy commenced, the property was managed by a company known as Connect Property Management (“CPM”). The deposit was paid to them. The understanding of the Applicants was that the deposit was held, as per the written tenancy agreement, by Safe Deposits Scotland. On 24 December 2019, the Applicants received a letter from North Lanarkshire Council advising that CPM had been refused registration as letting agents and were no longer allowed to manage the property. He contacted CPM and enquired about the deposit. He was told, firstly, that it was with Safe Deposits Scotland then, secondly, it had been misplaced. He then contacted the Respondent to discuss the deposit.
- 2.5 The Respondent confirmed that he understood the deposit was to have been lodged and this had been done outwith the prescribed period. He advised that he had previously used CPM to manage the property. They had taken payment of the deposit which was never held personally by him. He had entrusted the lodging of the deposit with CPM. As far as he was aware, this was done. He was unaware of any issue with the deposit or the management of the property until receiving a letter from North Lanarkshire Council regarding CPM’s unsuccessful registration. In January 2020 he instructed new letting agents. He understood they had paid CPM a sum in respect of a portfolio of properties. From that sum was deducted any tenancy deposits that had been taken and not lodged. Upon assuming management of the property, the new agents took steps to lodge the sum paid as a tenancy deposit with My Deposits Scotland. This was done in February 2020. He had been unaware that the Applicants had an issue

with the deposit until papers relating to the present application had been served upon him. He disputed that the issue had been raised in a telephone call between him and Mr Lucock following receipt by both parties of the letter concerning CPM from North Lanarkshire Council. He apologised for the late lodging of the deposit.

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 £3000.00 in terms of the present application. It should be noted that the terms of the application requested the Tribunal order the return of the deposit, however, that is not an order open to the Tribunal at present.

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 the Respondent that the late lodging of the deposit had been a result of what may best be described as maladministration on the part of the previous agents, CPM rather than a wilful breach of the 2011 Regulations on the part of the Respondent. Irrespective of whether the issue of the deposit was raised on or around 24 December 2019, in a telephone call between the parties, or was only discovered in January 2020 with the instruction of new letting agents, the deposit was subsequently protected. It continues to be so. In the opinion of the Tribunal, the most serious aspect of the breach was the length of time that the deposit remained unprotected, coupled with the relatively high sum taken as a deposit. Accordingly, the Tribunal was of the belief that the breach was relatively minor and should attract a sanction at the lower end of the scale available.

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 Houston

20 August 2020

Legal Member/Chair

Date