



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/20/0650

Re: Property at 1/2 90 Barrington Drive, Glasgow, G4 9ET (“the Property”)

Parties:

Miss Lucy Somerville, 203 Cumnerauld Road, Chryston, Glasgow, G69 9ND (“the Applicant”)

Mr Ghulam Sarwar Seema, 117 Cortmalaw Crescent, Glasgow, G33 1TD (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment due to the landlord’s failure to timeously lodge the tenancy deposit with an approved scheme.
2. The application contained,
 - (a) a copy of the Tenancy Agreement showing commencement date.
3. The Applicant attended the case management discussion together with her representative, Mr Somerville. There was no appearance by the Respondent. The application together with notice of today’s hearing had been served on the

Respondent by sheriff officers on 8 July 2020. As the Respondent had received notice of today's hearing I was prepared to proceed with the case management discussion in his absence.

Discussion

4. The Applicant confirmed that she was seeking a payment order against the Respondent for his failure to lodge her deposit into an approved scheme.
5. The Applicant advised that she had paid a deposit of £425 about one month before the commencement of the tenancy, around the beginning of August 2019. She paid the deposit by bank transfer. She then took entry to the tenancy in 29 August 2019.
6. She advised that this was the first property she had rented. She had been advised by the Respondent when she paid the deposit, that it would be properly protected and that it would be registered with Safe Deposits Scotland. She had assumed that the Respondent would therefore handle the deposit correctly. She advised that it was the Respondent who raised the issue about placing the deposit into a scheme, it was not in response to a question from her about it.
7. She advised that while she was residing in the tenancy other tenants living with her had advised her that the Respondent often did not return deposits to tenants, or only returned part of them.
8. She advised that she gave notice to the Respondent in November 2019 that she would be moving out of the property on 17 December 2019. When she gave the Respondent notice to leave, she advised that she told him that to ensure that she got her deposit back she was not going to pay him his final months' rent. She advised that the Respondent told her "this was OK".
9. She advised that she lived in the property with another four tenants. She had been informed by them, that three of them had only received one half of their deposits back. She advised that the Respondent had another property that he rented out. She did not know how long he had been a landlord for. She had contacted the local council, and they had advised her that he was a registered landlord.
10. She was concerned about the Respondent's general conduct as a landlord, she advised that he had not dealt with issues arising in the property, for example the boiler had not been working properly, and he failed to have it repaired timeously; she advised that the property had failed its gas inspection and the Respondent failed to address this failure as well. She advised that after she had moved out of the property, she had tried to contact the Respondent by text and calls to get a reference and he has never responded to her attempts at contact.
11. In conclusion, she advised that she never received any correspondence confirming that her deposit was secured in an approved tenancy deposit scheme;

and further she never received any written or even verbal information from the landlord as to what had happened to her deposit.

Findings in Fact and Law

12. The tribunal made the following findings in fact and law:-

- (a) That a tenancy had commenced on 29 August 2019.
- (b) The Respondent was the landlord and the Applicant was the tenant.
- (c) That the Applicant had paid the Respondent a tenancy deposit in around early August 2019 of £425.
- (d) That the tenancy had ended on 17 December 2019.
- (e) That the tenancy deposit had not been lodged with an approved scheme within 30 working days of the tenancy beginning.

Reasons for Decision

13. The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits, and relevant to this case are the following 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; ...

...

14. Regulation 9 provides that 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.

15. Regulation 10 provides that if satisfied that the landlord did not comply with any duty in regulation 3 then the first tier tribunal — must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and may, as it 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.

16. The Respondent did not appear today. He did not submit any written or verbal representation about what happened to the deposit. He had however been served with notice of today's discussion.

17. Given that it appears that a deposit was paid by the Applicant; that the deposit was not secured in an approved scheme; that no information was provided as to what happened to the deposit; and as the Applicant made a timeous application within 3 months of the end of the tenancy, I consider that the terms of Regulation 10 are engaged and I must order that the Respondent pay the Applicant an amount not exceeding three times the amount of her tenancy deposit. The amount to be paid requires to be determined according to the circumstances of the case, the more serious the breach of the regulations the greater the penalty.
18. In this case, I consider that a sum of 2.5 times the value of the deposit would be appropriate, namely £1,062.50.
19. There has been a breach of the regulations. I consider that it has been quite a serious breach. Any penalty should therefore be at the higher end of the scale, albeit, not at the very highest end of the scale.
20. In considering what penalty to impose, I have had regard to the written and verbal submissions by the Applicant.
21. I consider that it is a serious matter to fail to lodge a tenancy deposit in accordance with the regulations. It is relevant that the Respondent has failed to respond at all to this application. It appears that he was aware of his obligation to lodge a deposit. He has other tenants and other properties. Ignorance of the regulations would not have been a defence, but in any event in this case it appears that he was well aware of the regulations. He also had responsibility for a number other deposits and the Applicant was not the only tenant he held a deposit for. It does not appear therefore that the Respondent was an inexperienced landlord. It also does not appear that this was a simple administrative oversight on his part, given the Applicant advised that other tenants had not had their deposits repaid or repaid in full. The Respondent appears to have been aware of his duties under the regulations, and therefore should have ensured that the deposit was lodged timeously. The fact that the Applicant advised the Respondent that that she would not pay her final month's rent in order to ensure that she received the return of the deposit supports that conclusion that the deposit was not lodged by the Respondent, otherwise it is unlikely he would have accepted this suggestion, particularly since it is in contravention of the lease terms.
22. There are two issues that appear to mitigate from the seriousness of the matter. The Respondent had 30 working days from the beginning of the tenancy in which to lodge the deposit, and therefore had until around the 9th of October to do so. The time period when the deposit was not secured was therefore relatively short. In addition, the Applicant was not prejudiced because ultimately she took the decision to refuse to pay her final month's rent in lieu of the deposit. While these matters provide some mitigation to the Respondent, I do note that they only arise because of the actions by the Applicant in taking steps to end her tenancy early and protect her deposit herself.
23. I have been made aware of no other mitigation for the Respondent.

24. I consider that orders in these cases impose a sanction on a landlord. It is hoped that the sanction will make a landlord take note of the breach; rectify future conduct; and ensure that tenancy deposits are secured in accordance with the regulations. For all the reasons set out above, I consider that the matter is serious and a sanction needs to be imposed that will ensure that the Respondent is aware of the seriousness of the matter; and the sanction should therefore be towards the upper end of the scale. I consider that there appears to have been a blatant or reckless disregard for the regulations, and the Respondent has made no attempt to explain how this breach came to light.

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.

M Barbour

11 August 2020

Legal Member/Chair

Date