



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under the Housing (Scotland) Act 2006 section 121 and Regulation 9 the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/20/1082

Re: Property at 73F Charlotte Street, Aberdeen, AB25 1LY (“the Property”)

Parties:

Miss Holly Sinclair, 28 Lumsden Park, Cupar, Fife, FK15 5YL (“the Applicant”)

AMD Property (Aberdeen) Ltd, c/o Homeguard Leasing, 115 Rosemount Place, Aberdeen, AB25 2YG (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Landlord is in breach of her obligations in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“Regulation 3”). The Respondent shall make payment to the Applicant in the sum of THREE HUNDRED AND NINETY FIVE POUNDS (£395) STIRLING

Background

1. The Tribunal received an application from the Applicant in terms of Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017 which was signed on 24th April 2020.
2. A Case Management Decision (“CMD”) was held on 10th August 2020 by teleconferencing. The Applicant failed to attend so it was continue to allow her attendance. A new date was set for 22nd September 2020 by teleconferencing.

The Case Management Discussion

3. A CMD was held 22nd September at 10am by teleconferencing due to Covid 19 restrictions. The Applicant was present and represented herself. The Respondent was represented by Mr Gavin Strachan, Managing Director of Homeguard Leasing Ltd. Both the Respondent and the Respondent's representative had written to the Housing and Property Chamber prior to the first CMD to confirm that the deposit had not been lodged in an approved scheme. It was noted that this had been a clerical error. Their systems have since been looked into and changed so that this does not occur again. Mr Strachan noted that the Respondent aimed to be a responsible landlord and had not been before the Housing and Property Chamber tribunals before. The Applicant was encouraged to hear that the system was now changed. Mr Strachan advised that he will contact the Applicant regarding payment once the documentation has been received from the Housing and Property Chamber. The Tribunal's view was that it was significant that steps had been taken to prevent this happening again but that the duty to lodge the deposit had not been adhered to in the appropriate time. However, given the changes to their system and that the deposit was lodged once the error was noticed the Tribunal considered that one month's rent was an appropriate sanction. Both parties indicated that they were satisfied with this outcome.

Findings and reason for decision

4. The Applicant paid a deposit of £395 in respect of the tenancy.
5. The parties entered into a Private Residential Tenancy on 13th January 2020. The rent payments of £395 per calendar month which were due on 13th day of each month.
6. The Respondent did not pay the deposit into an approved scheme.
7. The Respondent confirmed that the duties in terms of Regulation 3 were not met.
8. The Respondent's agents, who were dealing with the deposit, have since changed their systems to ensure that all future deposits are lodged in an approved scheme.
9. The Respondent's agent lodged the deposit in an approved scheme once their error became apparent.
10. The Applicant has left the Property.

Reasons for Decision

11. The Respondent confirmed to the Tribunal that the deposit had not been paid into a Tenancy Deposit Scheme. The Respondent confirmed that this had been an error but that systems had been changed to ensure that this did not occur again. The Tribunal consider all the facts and circumstances before it and noted that the Respondent had confirmed the position, that the systems were changed and that the deposit was subsequently lodged in an approved scheme. The Tribunal decided that a fair, just and proportionate sanction would be to order the Respondent to pay the Applicant the amount of one times the amount of the deposit (£395).

Decision

12. The Tribunal awards payment to the Applicant by the Respondent in the sum of £395.

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.

Gabrielle Miller

Legal Member/Chair

22nd September 2020

Date