



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

Chamber Ref: FTS/HPC/PR/21/1206

Re: Property at 25 (1F) Regent Quay, Aberdeen, AB11 5AH (“the Property”)

Parties:

Mr Emilio Jose Rozas Lima, 7/8 Tyler Gardens, Edinburgh, EH8 8HS (“the Applicant”)

DDCL Gowans Properties, 21 York Place, Edinburgh, EH1 3EN (“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 his 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 £100 POUNDS (ONE HUNDRED POUNDS) 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 dated 19th May 2021.
2. The Applicant advised in the application that the tenancy had commenced on 4th December 2020. The tenancy is a Private Rented Tenancy. The Respondent did not place the deposit in an approved deposit scheme within 30 days of the start of the tenancy. The deposit paid was £100, paid on 4th December 2020.

3. A Case Management Discussion (“CMD”) was fixed for 10th August 2021. Neither party attended the hearing. Submissions from the Respondent indicated that he wished to have the case conjoined with HPC/CV/21/1607. The Tribunal considered that there could be some confusion between parties regarding if the CMD was going ahead on that day. In the interest of natural justice the Tribunal continued the CMD to another date to allow both parties the opportunity to attend the CMD and to have the cases conjoined.

The Case Management Discussion

4. A CMD was held on 1st November 2021 at 10am by teleconferencing. The Applicant attended and represented himself. The Respondent did not attend and was represented by Mr Dean Gowans.
5. The Applicant confirmed that his position remained that he considered that the rules were breached as the deposit was lodged approximately 2 months and after the start of the tenancy.
6. The Respondent’s representative told the Tribunal that he admitted that he had not lodged the deposit in the required time. He was going through an extremely difficult time that was affected by personal matters around the Covid pandemic. His staff were furloughed. He found it very difficult to manage the properties that he has which are houses of multiple occupancy properties on his own. He has 24 properties. The letting market was not easy at that time. He would normally let out the Property to 5 people at once rather than individual lets. It was difficult managing to let the Property during Covid. He had to reduce the rent and let to more transient tenants. This meant a great turnover of tenants and more deposits to deal with. Under normal circumstances his staff would deal with this but it was solely him who was dealing with it. He recognised that he had not dealt with it as a priority and is now aware of the significance. In addition his staff are now back in place. The Applicant disputed that the turnover in the Property was so high.

Finding in fact

7. The Applicant paid a deposit of £100 on 4th December 2020 in respect of a tenancy in the property owned by the Respondent.
8. The start date of the tenancy was 4th December 2020.
9. The deposit was lodged in an approved scheme on 28th February 2021.
10. The deposit was not paid in to an approved deposit scheme within the required time.

Decision

11. The Respondent has a duty under Regulation 3 to place the deposit in an approved scheme within the specified time but failed to do so. The Respondent was under exceptional circumstances due to Covid. This included the furlough of his staff. His staff have now returned to work. The Tribunal decided that a fair, just and proportionate sanction would be to order the Respondent to pay the Applicant one times the amount of the deposit (£100).

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

01/11/2021

Legal Member/Chair

Date