



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

Chamber Ref: FTS/HPC/PR/23/0870

Re: Property at 1 Silver Birch Drive, Glasgow, G51 4EF (“the Property”)

Parties:

Ms Michelle Taylor, 19 Hurllehill Court, Glasgow, G53 7TB (“the Applicant”)

Mr Jeff Davidson, 1 Halkirk Gate, Blantyre, Glasgow, G72 0GG (“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 £850 (EIGHT HUNDRED AND FIFTY POUNDS) which is one times the amount of the deposit.

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 dated 17th March 2023. The Application detailed that a deposit of £850 had been paid by the Applicant to the Respondent.
2. On 10th May 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 14th June 2023 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 31st May 2023.

3. On 13th June 2023, the Respondent emailed asking for a postponement of the CMD to allow time for him to get legal advice. The postponement was granted.
4. On 4th August 2023, all parties were written to with the date for the Case Management Discussion ("CMD") of 6th September 2023 at 2pm by teleconferencing.

The Case Management Discussion

5. A CMD was held on 6th September 2023 at 2pm by teleconferencing. The Applicant was present and represented by Ms Charis Brooks, Trainee Solicitor, Goven Law Centre. The Respondent was present and represented himself.
6. Ms Brooks said that she was seeking a three times penalty for the breach of regulations by the deposit not being lodged in an approved deposit scheme within the legally dictated time scale.
7. The Respondent said that he had given the deposit to someone who was dealing with his financial affairs. He was in a relationship with this person but has since separated and she has left the country. He has been in contact with her regarding the deposits for these properties. His ex partner has said that they were lodged in deposit schemes but has not forwarded any evidence of this. During Covid the Applicant contacted him to say that she was undergoing financial pressures and wanted to use some of her deposit against some of her rent. The Respondent did not have an issue with this. He arranged for his now ex partner to have the deposit transferred into his bank. He then allocated £200 from the deposit to the rent account. This left £650 in his bank account. This amount remains there. He has not heard from the Applicant about her having her deposit returned. He is in the process of raising a case against the Applicant for damage caused to the Property and outstanding rent arrears. The Applicant disputes what the Respondent said regarding the outstanding money due and asking for the deposit to be used towards her rent. The Tribunal explained that its jurisdiction today is only to deal with if a deposit has been paid in an approved deposit scheme within 30 days of the deposit being received from the Applicant. The Respondent confirmed that he did not believe that the deposit had been placed in an approved scheme. The Respondent said that he was in the process of selling his two properties that he has let out. He expects those sales to be completed this week. He will then remove himself from the Landlord Register.

Findings and reason for decision

8. A tenancy commenced on 11th July 2017. The Applicant left the tenancy on 22nd December 2022.
9. A deposit of £850 was paid on 11th July 2017.
10. The Respondent has failed to comply with the regulations to ensure that the deposit was lodged in an appropriate scheme within 30 days from the start of the tenancy. The Respondent admitted the breach. The Respondent has

engaged with the Tribunal process, admitted the breach, he will have sold both properties this week then will remove himself from the landlord register.

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 did engage with the Tribunal process to explain why the deposit was not lodged in approved scheme and he was due to have sold both his properties this week. He intends to remove himself from the landlord register. However, the deposit was taken in 2017 and it is the landlord's duty to ensure that it is lodged within an approved scheme within 30 days. 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 (£850.00).

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

6th September 2023

Legal Member/Chair

Date