



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/23/2461

Re: Property at 18 Granby Avenue, Livingston, EH54 6LB (“the Property”)

Parties:

Miss Marcia Nagle, 37 Almondell Road, Broxburn, EH52 5QG (“the Applicant”)

Mr Michael Barclay, 64 Granby Avenue, Howden, Livingston, EH54 6LB (“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 £620 (SIX HUNDRED AND TWENTY POUNDS).

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 18th August 2023. The Application included a lease which detailed that a deposit of £620 had been paid.
2. On 11th August 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 15th September 2023 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 1st September 2023.

3. On 14th August 2023, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent personally. This was evidenced by Certificate of Intimation dated 14th August 2023.
4. On 6th September 2023, the Respondent's solicitor sent in representations advising that the Respondent admitted the breach and that he has now been fully advised of his legal obligations.

The Case Management Discussion

5. A CMD was held on 15th September 2023 at 2pm by teleconferencing. The Applicant was present and represented herself. The Respondent was not present but was represented by Mr Eric Lumsden, Partner, Sneddon Morrison Solicitors and Estate Agents.
6. The Applicant said that she had been aggrieved by the fact that she had not received her deposit back in one lump sum. Prior to leaving she had an excellent relationship with the Respondent. The Tribunal noted that it only has powers to consider whether a breach of the Regulations has occurred. This is namely whether the deposit has been lodged within an approved scheme within 30 days of the lease starting.
7. Mr Lumsden told the Tribunal that the Respondent has now sold the Property. He has lodged the deposit for his other two properties in an approved deposit scheme. Mr Lumsden has given the Respondent legal advice on his legal obligations as a landlord. The Respondent did not know that he had had to lodge a deposit but is now fully aware of this legal obligation.
8. The Tribunal considered that an appropriate penalty to be one times the deposit.

Findings and reason for decision

9. A Short Assured Tenancy commenced 1st December 2016.
10. A deposit of £620 was paid at the start of the tenancy.
11. The Respondent has admitted the breach. He has now lodged the deposits for the two other properties that he owns in a specified scheme. He has also taken advice from his solicitor regarding his legal obligations as a landlord.
12. The Respondent has now sold the Property.
13. 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

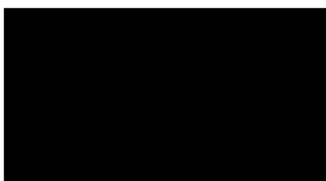
the tenancy. The Respondent has engaged with the Tribunal process to advise why this has happened and what steps have been taken to ensure that it will not happen again.

Decision

14. 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 has engaged with the Tribunal process to explain why the deposit was not lodged in an approved scheme, he has placed the deposits that he has for his other two properties in an approved scheme and he has admitted with breach. He has also taken legal advice from his solicitor with regard to his legal obligations and apologised for being ignorant of his legal obligations. 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 £620 (SIX HUNDRED AND TWENTY POUNDS).

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.



Legal Member/Chair

15th September 2023

Date