



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section Regulations 9 & 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Chamber Ref: FTS/HPC/PR/20/0605

Re: Property at 87 (3F2), Bruntsfield Place, Edinburgh, EH10 4HG (“the Property”)

Parties:

Miss Luciana Mongevia, Mr Luke Ball, Mr Liam Hann, Mr Richard Tomlinson, Mr Nikolai Wiren, 87 (3f2), Bruntsfield Place, Edinburgh, EH10 4HG; 87 (3F2), Bruntsfield Place, Edinburgh, EH10 4FG; 87 (3F2), Bruntsfield Place, Edinburgh, EH10 4HG; 87 (3F2), Bruntsfield Place, Edinburgh, EH10 4HG; 87 Bruntsfield Place, Flat 6 (3f2), Edinburgh, EH10 4HG (“the Applicant”)

Mrs Corinne Williams, c/o Grant Property, 14 Coates Crescent, Edinburgh, EH3 7AF (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member)

1. This Hearing was a Case Management Discussion (hereinafter referred to as a “CMD”) fixed in terms of Rule 17 of the Procedure Rules and concerned an Application under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (hereinafter referred to as “the Deposit Regulations”). The purpose of the Hearing being to explore how the parties’ dispute may be efficiently resolved. The purpose of the hearing was explained and it was understood a final decision could be made. The hearing took place by teleconference due to the covid-19 pandemic.

2. Decision (In Absence)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £6500 in terms of Regulation 10(a) of the Regulations should be made.

3. Attendance and Representation

The Applicant Luke Ball was present and unrepresented. The other joint Applicant’s were not present.

The Respondent was not present and unrepresented. Service had been attempted at the address she uses as landlord care of 14 Coates Crescent, Edinburgh, EH3 7AF but service was refused by Grant Property, 14 Coates Crescent, Edinburgh, EH3 7AF who did not disclose an address for the Respondent. Accordingly before the Hearing service took place on the Respondent b advertisement.

4. Preliminary Matters

The Applicant indicated the deposit paid was one deposit of £3250 split between all the Applicants and the Application proceeded at the Tribunal as one Application. There were no preliminary matters raised other than the fact that service was not accepted at the landlords care of address and the Applicant had no other information as to her whereabouts.

5. The Case Management Discussion

- The Applicant set out his position for the purpose of the CMD summarised as follows;
 - The initial deposit was £3250 made on 17th September 2019 prior to the commencement of the tenancy on 17th September 2019 and paid to the Respondent.
 - Each of the Applicants paid £650 to the total deposit of £3250. The Applicant referred to documents lodged confirming this and also to the fact that the deposit they considered would be lodged in a safe deposit scheme within 30 days.
 - The Applicant said they were all aware of this having previously rented a flat together but noted that this did not occur. He said it was confirmed by Safe Deposit Scotland that the deposit was not registered until after the 30 days and was 100 days late.
 - Regulations 3 of the Deposit Regulations provide that the Respondent has 30 working days to register the deposit with a deposit protection scheme. The Applicant's position was that these regulations were complied with.
 - The Applicants position was that the Respondent was late in registering the deposit.
 - The Applicant said he felt that given the substantial amount and the latest of the Respondent regarding the deposit he sought an amount of 3 times the deposit given the failure.

6. Reasons for Decision

1. Rule 17 of the Procedure Rules provides that a Tribunal can do anything at a CMD which it may do at a Hearing, including making a decision. The Legal Member was satisfied that the Tribunal had everything before it that it would require in order to make a decision having regard to the Overriding Objective. The sufficiency of facts and evidence lodged and submitted by the Applicants

allowed a decision to be made. No further evidence not already before the Tribunal was referred to by the Applicant. The Respondent had been serviced by Advertisement.

2. The Application was brought timeously in terms of regulations 9(2) of the Deposit Regulations.
3. The Tenancy Agreement contains a clause at 12 explaining the deposit was £3250 and would be paid within 30 days of the start of the tenancy to Safe Deposit Scotland.
4. In terms of Deposit Regulation 10 if the FTT is satisfied that the landlord did not comply with any duty detailed in Regulation 3 then the FTT must order a landlord to pay the tenant or tenants an amount not exceeding three times the amount of the tenancy deposit.
5. The FTT was satisfied that the Respondent did not register the deposit with a deposit protection scheme as required by Regulation 3. An email from Safe Deposit Scotland confirmed that the deposit was registered late.
6. The FTT was also satisfied that a deposit had been paid by the Applicants to the Respondent due to the various evidence lodged by the Applicants.
7. If the FTT was satisfied a breach of the regulations had occurred the FTT had to make an order in terms of Regulation 10.
8. In terms of Regulation 10 the FTT is obliged to make an order up to 3 times the deposit of the applicants to the respondent.
9. When considering the Order and level of sanction the FTT must have regard to the severity of the breach and any mitigating factors.
10. The deposit was unsecured for a period of around 100 days of the tenancy. Whilst it was registered the level of monies and the deposit were substantial.
11. In the case of *Jenson v Fappiano* 2015 G.W.D 4-89 in relation to the amount of such an Award under regulation 10 of the Regulations it was noted that a judicial analysis of the nature of the non-compliance was required and a value attached to reflect a sanction which was fair and proportionate and just given the circumstances.
12. It was further noted that the Sheriff said in said case that the value was not the starting point of three times the deposit minus the mitigating factors it was what was fair and proportionate in the exercise of balanced judicial discretion.
13. The Court of Session in *Tenzin v Russell* 2015 Hous. L.R 11 held that any payment in terms of Regulation 10 of the Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.

14. The FTT was therefore of the view that an Award should be made in the middle end of the scale as the deposit had been late for a significant period of time and the deposit amount was substantial. Accordingly in balancing the circumstances it found the Applicants entitled to an award of 2 times the deposit to the sum of £6500.

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.

Karen Kirk

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4th September 2020

Legal Member/Chair

Date