



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

Chamber Ref: FTS/HPC/PR/20/1500

Re: Property at G/R 23 Hayburn Crescent, Glasgow, G11 5AY (“the Property”)

Parties:

Dana Cruickshank residing at 9 Hawthorne Drive, 02052, Medfield, USA (The first applicant); Kayja Kraljevic, residing at Avenija Veceslava Holjeca 14. 10020, Zagreb, Croatia (The second applicant); Anna Shams Ili, residing at Buddingevej 87E, 2800, Lyngby, Denmark (The third applicant), and Alexander Evison (The fourth applicant, residing at 2 Newbigging Steading, Inverbervie, Montrose, DD10 0PQ (“The fifth applicant”)

And

Mary Maxwell, residing at 1/2, 24 Hayburn Crescent, Glasgow, G11 5AY (“the Respondent”)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has breached her obligations under regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Background

1. On 8, 19 & 20 all days of May 2019 the respondent let to the applicants the property at G/R 23 Hayburn Crescent, Glasgow, G11 5AY. A Tenancy agreement was entered into which required payment of a deposit of £1800. The tenancy started on 1 June 2020 and ended on 16 April 2020.

The Case Management Discussion

2. A Case Management Discussion took place before the Tribunal by telephone conference at 2.00pm on 10 September 2020. The first, second and third Applicants were present. They nominated the first applicant to speak on behalf of all five

applicants. The respondent was represented by Mr C Sheridan, solicitor. The respondent's solicitors submitted written representations on 2 September 2020. I am satisfied that I can justly determine this case in the respondent's absence.

3. In the respondent's solicitor's letter of 2 September 2020 the respondent admits breaching the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") and sets out mitigating factors. The tenant offers to pay the applicants £1200 and suggests that a payment order should be made in that sum

4. The applicants agree that they have received a refund of the deposit and that a payment order should be made in the sum of £1,200. I am faced with a joint motion to make a payment order in favour of the applicants in the sum of £1,200.00.

Findings in Fact

5. A tenancy agreement was entered into by the parties on 1 June 2019. The applicants paid a deposit of £1800, which should have been paid into an approved scheme not later than 1 July 2020.

6. The respondent paid the deposit into an English scheme on 9 August 2019. An English scheme is not an approved scheme in terms of the 2011 Regulations. Soon after the tenancy terminated the respondent repaid the deposit funds to the applicants.

7. The respondent had no intention of depriving the applicants of repayment.

Reasons for Decision

8. It is beyond dispute that a deposit of £1800 was paid at the commencement of the tenancy. On the facts as I find them to be, the deposit was not paid into an approved scheme when it should have been.

9. This may have been the respondent's first experience as a landlady. The respondent believed she had paid the deposit into an approved scheme, although late.

10. The respondent acknowledges her error. The respondent has no history of breaches of the 2011 Regulations. A full accounting for the deposit has been made. Against those mitigating factors I must balance the undisputed fact that the deposit was unprotected.

11. The Applicants asked me to make a payment order. The purpose of the order is not to enrich the applicant. The purpose of the order is to punish the respondent; to mark society's displeasure; to protect society and to ensure the enforcement of the 2011 Regulations in the future.

12. Parties take a joint (and pragmatic) approach to this application. Of consent, I am asked to make a payment order in the sum of £1,200.00

13. The appropriate level of payment order is £1,200.00

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant of One Thousand Two Hundred pounds (£1,200.00) within 14 days of service of this order.

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

10 September 2020

Paul Doyle