



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 and Regulations 3, 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/20/1905

Re: Property at 46 Whiteside, Bathgate, West Lothian, EH48 2RG (“the Property”)

Parties:

Miss Annemarie Scott, 70 Glenmore, Whitburn, West Lothian, EH47 8NR (“the Applicant”)

Miss Hazel Hamilton, 30 Smithy Brae, Kirknewton, West Lothian, EH27 8AQ (“the Respondent”)

Tribunal Member:

George Clark (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent had not failed to comply with the requirements of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and refused the application.

Background

By application, received by the Tribunal on 1 September 2020, the Applicant sought an Order for Payment in respect of the failure of the Respondent to lodge timeously a deposit in an approved Tenancy Deposit Scheme, as required by the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”).

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing 10 December 2019 at a monthly rent of £500 and with a deposit of £500, and confirmation from SafeDeposits Scotland that the deposit had been protected from 28 January 2020. The Applicant contended that this was 19 days late. The Applicant confirmed that the tenancy had ended on 25 August 2020.

On 5 October 2020, the Tribunal advised the Parties of the date and time for a Case Management Discussion and the Respondent was invited to make written representations by 26 October.

The Respondent made written representations to the Tribunal On 20, 23 and 26 October 2020. The bulk of her submissions related to the fact that there had been various issues regarding damage to the Property during the tenancy and issues that had arisen when the tenancy ended, so were not considered by the Tribunal as they were not relevant to the matter in the application. The Respondent stated that she had allowed the Applicant to pay the deposit in two halves, £250 before the tenancy started and the balance of £250 by the end of that month. She had received the first payment on 3 December 2019 and had confirmed to the Applicant that she would hold it until the end of December, when the Respondent had said the second instalment would be paid. She provided the Tribunal with a copy of an email to the Applicant on 3 December 2019, in which she acknowledged receipt of the first payment of £250 and stated that when the balance of £250 was paid "I will then transfer £500 total deposit into a Deposit Agency to be held till the end of your Tenancy". The Respondent also provided a copy of a bank statement showing a transfer of £500 to SafeDeposits Scotland on 27 January 2020. She was sorry that the deposit had not been lodged sooner.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the morning of 14 October 2020. Both Parties participated in the call. A few minutes before the commencement of the Case Management Discussion, the Applicant made further written submissions. These comprised almost entirely responses to the written representations of the Respondent regarding the issues that had arisen between the Parties at the end of the tenancy, so were not regarded by the Tribunal as relevant. The Applicant did, however, state her view that the deadline for lodging the deposit would have been 9 January 2020.

The Tribunal Chair began by advising the Parties that the only issue before the Tribunal was the question of whether the deposit had been timeously lodged in an approved tenancy deposit scheme and that the representations relating to issues that had arisen during and at the end of the tenancy were not relevant. He also told the Parties that the 30-day period referred to for lodging deposits is 30 **working** days. Accordingly, weekends were not included and neither, in the present case, were 25 and 26 December 2019 or 1 and 2 January 2020, as these were public holidays. He had calculated that the 30-working day period from the commencement of the tenancy on 11 December 2019 ended on 27 January 2020. SafeDeposits Scotland had confirmed that the deposit had been protected from the following day, but the Respondents had provided evidence that it had in fact been transferred to them on 27 January. Accordingly, perhaps more through luck than judgement, it appeared that the Respondent had paid the deposit to SafeDeposits Scotland on the final day of the 30-working day period.

The Applicant accepted that, in making her calculations, she had thought it was a straight 30-day period that was allowed and that she had not, therefore, considered the question of weekends or public holidays.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case

Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Regulation 3 of the 2011 Regulations states that a landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy, pay the deposit to the scheme administrator of an approved scheme and must provide the tenant with certain information required under Regulation 42 of the 2011 Regulations. Regulation 10 of the 2011 Regulations provides that, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.

The Tribunal considered all the information before it. It held that the tenancy commenced on 11 December 2019, and that the deposit was paid to SafeDeposits Scotland on 27 January 2020, the thirtieth working day from 11 December (including 11 December itself). Accordingly, the Respondent had complied with the requirement to pay the deposit to the scheme administrator of an approved scheme. No evidence had been led to suggest that the Respondent had failed to comply with any other duty incumbent on her under Regulation 3 of the 2011 Regulations.

Decision

The Tribunal determined that the Respondent had not failed to comply with the requirements of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and refused the application.

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.

George Clark

Legal Member/Chair

9 November 2020
Date