

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision with statement of reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/PR/19/2855

Property Address: 51/3 Manor Place, Edinburgh, EH3 7EG

The Parties: Miss Shauna Fitzmaurice, 14/5 Steels Place, Edinburgh, EH10 4QS ("the tenant")

Mrs Helen Buchanan, Elgin Cottage, Dunfermline, Fife, KY11 3SH ("the landlords")

Tribunal Members

Mark Thorley Legal member
David Fotheringham Ordinary Member

Decision

That the respondent is not liable to pay any penalty in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Background

1. The applicant applied to the First-tier Tribunal under Rule 69 of the Tribunal Rules. This application was accompanied by other applications made by the same party in respect of the same respondent.
2. The Tribunal accepted the application under regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. Subsequently the Tribunal required clarification of what rule the application was proceeding under. It was set down under Rule 69. The applicant then confirmed that it was a rule 110.

Subsequently the application on the 30th October 2019 was accepted. Written representations were required by 20th December.

3. Written representations were received by the respondent dated 18th December 2019.
4. The case proceeded to a case management discussion on 9th January 2020.
5. At that stage the questions for the hearing were as follows:
 - (i) Was the applicant a tenant of the respondent in respect of the property and did she pay a deposit of £433 for a relevant tenancy that meant the respondent was required to have lodged the deposit in an approved scheme.
 - (ii) If so what is the appropriate penalty.
6. Both parties were advised that they should consider taking Legal Advice. At the hearing neither party attended with legal representation.
7. The applicant attended along with Aisling Rogerson who was a witness. The respondent attended along with two supporters. Neither of the supporters participated. The tribunal heard from both the applicant and the respondent.

Findings in fact

1. The applicant occupied (along with others) the property at 51/3 Manor Place, Edinburgh, EH3 7EG. She took up occupation on 30th September 2018. At the time when the applicant occupied the property there were two other occupants of the property. She replaced another occupant, Anna Vittinghoff. There were two other occupants of the property, Catherine Reidy and Aisling Rogerson.
2. Although not lodged at the Tribunal, Catherine Reidy and Aisling Rogerson had entered into a tenancy agreement with the respondent.
3. In terms of that tenancy agreement there was a deposit of £1300 which had been lodged.
4. The applicant paid to the previous occupant, Anna Vittinghoff, the sum of £433 which represented Anna Vittinghoff's share of the deposit. The applicant did not pay the deposit to the respondent.
5. The tenancy deposit of £1300 was lodged by the respondent with My Deposit Scotland Ltd and a document confirming that was lodged with the papers. That confirmed that the tenants were Aisling Rogerson and Catherine Reidy and that the date that the deposit was received by My Deposit Scotland was the 1st August 2016.
6. The applicant never entered in to a tenancy agreement with the respondent despite requests to do so.

7. The respondent had issued a note dated October 2018 in which she acknowledged receiving from the applicant the sum of £433 being her share of the deposit and in which she confirmed that sum was to be lodged by the landlord to My Deposit Scotland Ltd. That document was created by the respondent and acknowledged by her to be absolutely incorrect in respect that there was no tenancy agreement between the applicant and the respondent and that the respondent had never received a deposit from the applicant.
8. The tenancy came to an end on about 8th July 2019.
9. The applicant has had her deposit returned to her. The deposit of £1300 which was lodged with My Deposit Scotland was the subject of adjudication.
10. Without a written tenancy the Deposit could not be placed in a tenancy deposit scheme.

Reasons for decision

1. Having heard from the applicant and the respondent there was a considerable amount of agreement as to matters of fact. The applicant had moved in to the property on 30th September 2018. There were already two tenants present there, Catherine Reidy and Aisling Rogerson. These tenants had a tenancy agreement with the respondent. There was another occupier, Anna Vittinghoff, who had occupied the premises along with Catherine Reidy and Aisling Rogerson. She left and the applicant replaced her.
2. The applicant paid the sum of £433 to Anna Vittinghoff. That represented one third of the deposit which was already lodged with My Deposit Scotland. The protection certificate from My Deposit Scotland was lodged with the papers in which established that the £1300 of deposit was lodged on the 1st August 2016. The certificate also confirmed the end of the date of the Fixed Term Tenancy Agreement 9th July 2019.
3. Both parties accepted that it would not have been possible for My Deposit Scotland to have taken in a deposit from a party who was not subject to a tenancy agreement. The applicant was never subject to a tenancy agreement. There was evidence led at the Tribunal as to whether there should have been a tenancy agreement or not. The applicant's position was that she provided all requisite information for there to be a tenancy agreement. The respondent, who managed the property herself, disputed that. That issue in itself was a side issue which did not bear on the ultimate decision of the tribunal.
4. It was acknowledged by both parties that there was no tenancy agreement naming the applicant on the tenancy agreement. It was also acknowledged that the respondent had never received from the applicant the deposit. All that had happened is that one occupant had left, another had taken her place, and the incoming applicant had paid out a share of the deposit to the previous occupier Anna Vittinghoff.

5. The respondent had prepared a document. The respondent acknowledged that she had prepared the document dated October 2018 although she said it had been prepared at the end of June 2019 in which she has said to have received the sum of £433 sterling from the applicant and that sum was to be lodged by the landlord with My Deposit Scotland Co Ltd. Both parties accepted that although the respondent had created that document and signed that document that in fact the respondent had never received the money and clearly could not put it into the scheme.
6. The Tribunal felt able to deal with the matter in relatively short compass.
7. Firstly there was no tenancy agreement between the parties. As such it was not possible for the respondent to lodge with the tenancy deposit scheme any deposit from the applicant. Further the respondent never received the applicant's deposit. Finally a full deposit was held by My Deposit Scotland Co Ltd on 1st August 2016 for the full sum of £1300.

Decision

That the respondent is not liable to pay any penalty in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

M Thorley

21st Feb 2020

Legal Marker