



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

Chamber Ref: FTS/HPC/PR/23/1554

Re: Property at 49/3 The Green, Edinburgh, EH4 5AE (“the Property”)

Parties:

Miss Fiona Falco, 21/2 Belgrave Crescent, Edinburgh, EH4 3AJ (“the Applicant”)

G C Fraser Ltd, 2 Hillpark Rise, Edinburgh, EH4 7BB (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

- Background

This is an application for an order for payment of a sanction in relation to an alleged failure on the part of the Respondent to pay a tenancy deposit paid to it by the Applicant into an approved scheme and carry out the other duties incumbent on it in terms of reg.3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (‘the Regulations’). It called for a case management discussion (‘CMD’) at 2pm on 28 September 2023, by teleconference. The Applicant was on the line in person. The Respondent was represented by Mr Grant Fraser, its director.

- Findings in Fact

1. The Applicant let the Property from the Respondent in terms of private residential tenancy with a start date of 9 May 2022.
2. In terms of that agreement, a deposit of £900 was paid to the Respondent by the Applicant on 30 April 2022.
3. The Respondent did not pay the deposit into an approved scheme or furnish the Applicant with any of the information required by reg.3 of the Regulations.
4. The tenancy was terminated on 19 April 2023.
5. On 7 May 2023, the Respondent returned £800 of the deposit, retaining the remainder against what he described as cleaning and paint repair.
6. This application was raised on 12 May 2023.
7. The failure to observe the duties under reg.3 was due to an oversight on the part of the Respondent's sole director, Mr Fraser.
8. At the time this oversight occurred, Mr Fraser was under unusual personal and professional pressure.
9. The Respondent is a business which operates as a landlord only in regard to Mr Fraser's properties, which also include a property in Aberdeen.

- Reasons for Decision

10. The Respondent admits the failures alleged, as at para.3 above, and the other relevant factual background is not in dispute between the parties. There does remain some dispute between them as to the entitlement of the Applicant to repayment of the deposit. When this application was raised, the Respondent

replied making various complaints regarding the Applicant's behaviour, or listing other indulgences made towards her during the course of the tenancy; but none of these was ultimately of relevance to the question the Tribunal had to determine in this case, other than perhaps to demonstrate why it was seen as necessary to make the Regulations to address such disputes. Given that the tenancy has ended however, the Tribunal did not consider that an order requiring the Respondent to pay the deposit into an approved scheme, or complete any other of the reg.3 duties, would be of any practical benefit.

11. The sole question that therefore remained to be determined was the appropriate level of sanction to apply. The Tribunal noted that there was a complete failure in this case to carry out any of the duties incumbent on a landlord in regard to the deposit. The deposit remained unprotected for the entirety of the tenancy; and that has left the Applicant without recourse to any dispute resolution process to deal with her continuing dissatisfaction with the manner in which the Respondent treated the deposit at termination. Further, she has been put to the inconvenience and stress of having to raise this application and pursue it as far as a CMD to assert her rights. That is a serious failing on the part of the Respondent that completely undermines the protections imposed by the Regulations. That would suggest a sanction at somewhere in the mid to high range.

12. The Tribunal noted, however, that the Respondent is not a large-scale landlord; that the failures were admitted; and that they were attributable to an oversight, that took place at a time when its director was under unusual personal and professional pressure. That offered some mitigation; but this was counter-balanced to some extent by the Respondent's director's continuing lack of humility and contrition in relation to his errors. In the written response to the application, he suggested, "this application is nothing short of a disgruntled tenant trying to financially gain from flawed system [sic]." Words to a similar effect were used by him at the CMD. A genuine acceptance of a mistake and a resolution to do better does offer mitigation; but railing against the Regulations in response to a manifestly well-founded application is more

suggestive of a general lack of regard for the importance of the scheme of regulation generally, and undermines that effect.

13. Nevertheless, the Tribunal considered that there was some mitigation offered, particularly from the apparent one-off nature of the failure in question and the suggestion that matters would be handled by professional agents in the future. On that basis, and taking into account all the factors mentioned, the Tribunal considered a sanction at the lower end of the range identified was merited. It therefore ordered the Respondent to pay £1,350 to the Applicant, being one-and-half times the deposit.

- Decision

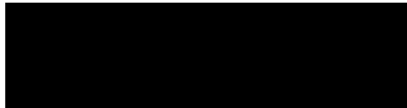
Order made for payment by the Respondent to the Applicant of the sum of ONE THOUSAND THREE HUNDRED AND FIFTY POUNDS STERLING (£1,350).

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

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Legal Member/Chair

18/10/2023

Date