



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

Chamber Ref: FTS/HPC/PR/24/0322

Re: Property at 7 Torridon Walk, Livingston, EH54 5AT (“the Property”)

Parties:

Mr Michal Cialkowski, 106 Firbank Grove, East Calder, EH53 0FE (“the Applicant”)

Mrs Angela Moohan, Mr Brendan Moohan, 18 Millfield, Livingston, EH54 7AR (“the Respondents”)

Tribunal Members:

Richard Mill (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order be granted against the Respondents in the sum of Eight Hundred and Fifty Pounds (£850)

Introduction

This is an application under Rule 103 and Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

The CMD took place by teleconference on 10 May 2024 at 10.00 am. The applicant was accompanied by a friend. The respondents were represented by Mr Jeffrey Livingston of Landlord Specialist Services Scotland.

Findings and Reasons

The property is 7 Torridon Walk, Livingston EH54 5AT. The applicant is Mr Michael Cialkowski who is one of the former tenants. The respondents are Mrs Angela Moohan and Mr Brendan Moohan who are the former landlords.

The applicant's co-tenant was Katarzyna Cialkowska, who is his wife. She is aware of and consents to the current application.

The parties entered into a private residential tenancy in respect of the property which commenced on 28 February 2020. The rent stipulated was £850 per calendar month. The applicant paid £850 by way of deposit.

The applicant must satisfy the tribunal by the production of sufficient documentary evidence that the deposit is not held by any one of the three Tenancy Deposit Schemes operating in Scotland which are SafeDeposits Scotland, Mydeposits Scotland or Letting Protection Service Scotland. The applicant has produced email confirmation from each scheme confirming that the deposit was not paid to them. The tribunal relied upon this credible and reliable documentary evidence.

Moreover the respondents have been candid in accepting that they did not adhere to the regulations and failed in their duties to pay the deposit into an approved scheme as required.

The tribunal was satisfied that the landlords have not complied with the requirements of the 2011 Regulations and in particular did not lodge the deposit paid into an approved scheme. The duties of landlords are contained within Regulation 3. This requires the landlord who has received the tenancy deposit in connection with the relevant tenancy to pay the deposit to a relevant scheme administrator from an approved scheme within 30 working days of the beginning of the tenancy. The respondents failed to do this.

The respondents explain that the failure to pay the deposit into an approved scheme was an oversight due to a number of circumstances which caused them stress. They found themselves to be 'accidental landlords' as the property had been lived in by the first respondents' parents who had moved into a nursing home. The tenancy agreement with the applicant was the only occasion that the property was let. It has now been sold. It is evidenced that an account was set up with Letting Protection Service Scotland but the respondents subsequently failed to pay the deposit paid into the scheme account.

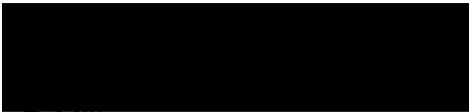
There has been no material prejudice to the applicant as the deposit was paid back in full.

The Tribunal was satisfied that the respondents failed to comply with the duty in Regulation 3. Regulation 10 requires the Tribunal to make an Order against the respondents to pay to the applicant an amount not exceeding three times the amount of the tenancy deposit.

The Tribunal considered all relevant circumstances prior to making any Order under Regulation 10. The tribunal found that the respondents' breach falls at the lower end of the scale. In all the circumstances, the Tribunal ordered that the respondents pay to the applicant the sum of one times the amount of the tenancy deposit ie a total of £850. This is fair and proportionate in all of the circumstances. The public require to have confidence that residential landlords are operating fairly and that their deposits are secured in accordance with the law in force in Scotland.

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.



R.Mill

Legal Member/Chair

10 May 2024

Date