



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section the Housing (Scotland) Act 2006 section 121 and Regulation 9 the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/24/1209

Re: Property at 31 Cogan Street, Barrhead, East Renfrewshire, G78 1QP (“the Property”)

Parties:

Ms Arabella Moss, Mr Joseph Nockels, 5 View House, 164 Solly Street, Sheffield, S1 4BB; 31 Burrowlee Rd, Hillsborough, Sheffield, S6 2AT (“the Applicant”)

Ms Gitte Oijerfeldt, 100 Main Street, Neilston, G783EA (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Landlord is in breach of her obligations in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“Regulation 3”). The Respondent shall make payment to the Applicant in the sum of £450 (FOUR HUNDRED AND FIFTY POUNDS) STIRLING.

Background

1. The Tribunal received an application from the Applicant in terms of Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017 dated 13th March 2024.
2. On 4th June 2024, all parties were written to with the date for the Case Management Discussion (“CMD”) of 9th July 2024 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 25th June 2024.

3. On 5th June 2024, sheriff officers served the letter with notice of the CMD date and documentation upon the Respondent personally. This was evidenced by Certificate of Intimation dated 5th June 2024.

The Case Management Discussion

4. A CMD was held on 5th June 2024. The Applicants were present and represented themselves. Mr Nockels spoke on behalf of both Applicants. The Respondent was present and represented herself.
5. The Applicants said that they had handed over the deposit in two parts on the 1st May 2023 and 1st June 2023. They had been nervous when they found out that the deposit was not lodged within an approved deposit scheme as they needed this money to pay for their next property. They raised this case as they did not want any future tenants to have this repeated.
6. The Respondent said that she did not lodge the deposit in an approved deposit scheme. She said that when she had the full deposit she contacted an approved scheme but was told it was too late to lodge the deposit as it was beyond the 30 days required period. The Tribunal considered that the scheme had misunderstood what the Respondent had said. It was clear that she could not lodge the deposit within 30 days of the lease starting because she did not receive it until after that point. However, she should have been able to lodge it when she had received it. The Respondent only lets out this property. She had lodged deposits before but thought that this one was different due to it being paid in two parts.
7. The Respondent said that she returned the whole of the deposit on the day the Applicants left save for £50 which was attributed to the cost of a new lock as the Applicants had lost a key. The Respondent said that this cost was £150 but she had reduced it to £50 as a goodwill gesture. The Applicants said that they did not dispute this amount though they had disputed an initial reduction of £150. They were satisfied of the amount which was returned to them.
8. The Tribunal was satisfied that there was a breach of the regulations but that it had occurred due an error on the part of the Respondent. She did return the deposit to the Applicants at the end of the lease and has the new deposit for her new tenant lodged in an approved scheme. The Tribunal found a penalty of half of the deposit was fair, reasonable and proportionate noting that its powers entitled it to grant an order for up to three times the deposit. The Tribunal felt that more than half a month's deposit was unjustified in this case as the Respondent should have been aware of her legal duties in terms of the deposit.

Findings and reason for decision

9. A Private Rented Tenancy Agreement commenced 1st April 2023. It is noted that this was not a Scottish Government Model Private Rented Tenancy Agreement but defaulted to one under section 3 of the of the Private Housing (Tenancies)(Scotland) Act 2016.

10. A deposit of £900 was paid from the Applicants to the Respondent. This deposit was paid in two payments of £450. The first part of the deposit was paid on 1st May 2023 and the second part was paid on 1st June 2023.
11. The deposit was not lodged within an approved tenancy deposit scheme within 30 days from the start of the tenancy. This is a breach of the regulations.
12. The Respondent admits the breach. The Respondent kept the deposit in her own bank account.
13. The Applicants left the Property on or around 12th February 2024. The amount of £850 was returned to the Applicants on 12th February 2024. This is the deposit less a reduction of £50 for a new lock which was necessary as a key was missing. The deduction is not disputed.
14. The Respondent has failed to comply with the regulations to ensure that the deposit was lodged in an appropriate scheme within 30 days from the start of the tenancy. The Respondent has engaged with the Tribunal process to advise why this has happened and what steps have been taken to ensure that it will not happen again. The new tenant in this property has had their deposit lodged in an approved scheme within the legal timescales.

Decision

15. The Respondent has a duty under Regulation 3 to place the deposit in an approved scheme within the specified time but failed to do so. The Respondent did engage with the Tribunal process to explain why the deposit was late and this has not been repeated again with the new tenant. As the deposit was not lodged in an approved scheme but was returned to the Applicants at the end of the tenancy the Tribunal decided that a fair, just and proportionate sanction would be to order the Respondent to pay the Applicant half the amount of the deposit (£450.00).

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.

Gabrielle Miller

9th July 2024

Legal Member/Chair

Date

