



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

Chamber Ref: FTS/HPC/PR/23/2213

Re: Property at 3/4 Lower Gilmore Bank, Edinburgh, EH3 9QP (“the Property”)

Parties:

Ms Satsuki Nomura, 4F2 11 Buccleuch Street, Edinburgh, EH8 9NG (“the Applicant”)

Mr Syed Adnan Ali, 3/4 Lower Gilmore Bank, Edinburgh, EH3 9QP (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Landlord is in breach of his 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 £2400 (TWO THOUSAND FOUR HUNDRED 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 29th June 2023. The Application included a lease which detailed that a deposit of £1200 had been paid.
2. On 5th September 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 13th October 2023 at 10am by teleconferencing. The letter also requested all written representations be submitted by 26th September 2023.

3. On 6th September 2023, sheriff officers served the letter with notice of the CMD date and documentation upon the Respondent by leaving it in the hands of Laixi Luo. This was evidenced by Certificate of Intimation dated 6th September 2023.
4. This case is conjoined with FTS/HPC/CV/23/2216.

The Case Management Discussion

5. A CMD was held on 13th October 2023 at 10am by teleconferencing. The Applicant was not present but was represented by Mr Peter Hanman, Advice Caseworker, Edinburgh University Students Association. The Respondents were not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make any in advance of the CMD. Mr Hanman noted that the lease specifies that there was a deposit of £1200 paid. Mr Hanman noted that the email of 12th June, at was lodged with the documents, stated that the deposit would be returned when he had the money to do so. The deposit schemes have been checked and there was no deposit lodged. There has been no contact from the Respondent. The Applicant has not had her deposit returned to her. This is the main subject of the adjoining case. The Tribunal was satisfied that the Respondent has made no attempt to engage with the Tribunal. He has not lodged the deposit in the a deposit scheme, he has indicated that he has no longer has it and has failed to return the deposit to the Applicant. The Respondent has submitted no defence as to why this occurred. It is a breach of the regulations and disregard of the Tribunal process. The Tribunal was satisfied that the sanction of three times the deposit was appropriate. The Tribunal decided that 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 not engage with the Tribunal process to explain why the deposit was late and what steps had been taken to prevent such a situation happening again. The evidence presented clearly stated that the Respondent no longer had the deposit and could not afford to repay it to the Applicant. The lease clearly states the deposit scheme that the deposit should be lodged into which clearly states the exact deposit scheme that the deposit will be put into. It is reasonable to say that the Respondent was aware of his obligations. The Tribunal decided that a fair, just and proportionate sanction would be to order the Respondent to pay the Applicant three times the amount of the deposit which is £3600.
6. On 18th October 2023 the Respondent emailed the Housing and Property Chamber stating that he has been out of the country for some time and did not receive the paperwork in time to attend the CMD. He first became aware when a person living in his property signed for a letter for him. She notified him of its arrival by sending a Whatsapp message. He instructed her to open the letter at that point. The letter informed him of the decision of the Tribunal to grant an order against him. This was the first point that he was aware of the proceedings in this or the joint case.

7. On 24th October 2023 the Respondent emailed the Housing and Property Chamber to confirm that he wished to recall the decision.
8. The Tribunal accepted that it was in the interests of justice to allow the recall to be granted given that the Respondent would have had intended to attend the CMD had he known about it. However, he had been unable to do so as he had only been made aware of the proceedings after the decision had been made. The Tribunal accepted this and recalled the Order on 8th November 2023.
9. On 9th February 2024, all parties were written to with the date for the Case Management Discussion (“CMD”) of 20th March 2024 at 10am by teleconferencing.

The recalled CMD

10. A CMD was held on 20th March 2024 at 10am by teleconferencing. The Applicant was not present but was represented by Mr Peter Hanman, Advice Caseworker, Edinburgh University Students Association. The Respondent was present and represented himself.
11. The Respondent was calling into the CMD from Belgium. It was unclear to the Tribunal about being able to take his evidence from Belgium without first gaining the permission of the Belgium government. The Tribunal was reluctant to take evidence from him until permission had been granted. The Respondent confirmed that he did not dispute that the deposit had not been lodged late but that such a fine was not justified. The Tribunal considered that given that there was a dispute that a hearing would need to be fixed. A direction will be issued.
12. The Respondent noted that he has been trying to contact the Applicant to repay her deposit to her. She has not so far responded to this. The Tribunal noted that there is nothing preventing the parties to discuss any matters arising from the case. They do not need to wait until a CMD or hearing to discuss matters if they wish to do so. The Tribunal adjourned to a hearing to allow permission to be granted for the Respondent to give evidence and for the Respondent to provide evidence as to why he considers that there is no overpayment of rent. A direction will be issued to both parties.

The Hearing

13. A hearing was held on 7th August 2024 at 10am by teleconferencing. The Applicant was not present but was represented by Mr Peter Hanman, Advice Caseworker, Edinburgh University Students Association. The Respondent was present and represented himself.
14. The Respondent admitted that he had not lodged the deposit in an approved scheme. He has previously lodged his tenant's deposits but had failed to lodge this deposit by an oversight on his part. He has now been made redundant again. He is in a difficult financial position. He is not paying his mortgage. There are arrears of approximately £15000. He currently has the Property on the market to sell it. He hopes to recoup the cost of the Property and to be able to address all of his debts when the sale goes through. At the moment there has not been

a lot of interest in the Property. He has had to reduce the Price to £335000. He has had to use an estate agent who will take their fees upon the sale of the Property as he cannot afford to pay those costs just now.

15. The Respondent is not in a financial position to repay the deposit to the Applicant. Although the Respondent first asserted that he did not have the Applicant's bank account but Mr Hanman said that there had been email sent to the Respondent by the Applicant in June 2023 with her bank details. The Respondent checked this and confirmed that he had her bank details then. He said that he was ashamed that he could not return the deposit and regretted not lodging it in a deposit scheme straight away.
16. Mr Hanman said that the Applicant's position remained as it has at the previous two CMDs.
17. The Tribunal said that it was unacceptable for the Respondent not to lodge the deposit in an approved scheme and not to have returned it to the Applicant. The Tribunal found that should receive a two times penalty for failing to lodge the deposit.

Findings and reason for decision

18. A Private Rented Tenancy Agreement commenced 22nd December 2022.
19. A deposit of £1200 was paid in two parts. The first payment of £400 was paid on 28th November 2022. The second payment of £800 was paid on 16th January 2023.
20. The deposit was not lodged in any specified deposit scheme. This is a breach of the regulations. The Respondent admits that he did not lodge the deposit in an approved deposit scheme.
21. The Respondent indicated to the Applicant that he no longer had her deposit and would pay it back to her when he had the money. He has not paid the deposit back to her. The Respondent cannot repay the deposit to the Applicant as he does not have the money and cannot afford to repay her. He has recently been made redundant and has outstanding debts including to his mortgage company.
22. The Respondent has the Property on the market to sell it. He is living in the Property on his own. He does not intend to re let it as he wishes it to be sold.
23. The Respondent has previously lodged his tenant's deposits within an approved scheme.

24. 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.

Decision

25. 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 admitted that he did not lodge the deposit in an approved scheme but has done so with his other tenants. The lease clearly states the deposit should be lodged and identifies the particular scheme where it will be lodged. It is reasonable to say that the Respondent was aware of his obligations. Significantly the deposit has not been returned to the Applicant and the Respondent is not in a financial position to return it to her. The purpose of the legislation is to protect parties by lodging the deposit in a deposit scheme. Failing to do so has failed to protect the deposit for the Applicant in this case. The Tribunal decided that a fair, just and proportionate sanction would be to order the Respondent to pay the Applicant two times the amount of the deposit which is £2400 (TWO THOUSAND FOUR HUNDRED POUNDS)

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.

G Miller

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7th August 2024

Legal Member/Chair

Date