



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/24/2248

Re: Property at 101/1 Brunswick Street, Edinburgh, EH7 5HR (“the Property”)

Parties:

Mr Ethan Guthrie, 93/12 Milton Road East, Edinburgh, EH15 2NL (“the Applicant”)

Mrs Jacqueline Kennedy, 25 Dunvegan Court, Glenrothes, KY6 2BL (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order be granted against the respondent requiring her to pay the applicant the sum of one thousand pounds (£1,000)

Introduction

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

Service of the application and intimation of the Case Management Discussion (CMD) was effected upon the respondent by Sheriff Officers on 26 August 2024.

The CMD took place by teleconference on 3 October 2024 at 2.00 pm. Both parties joined the hearing and represented their own interests.

Findings and Reasons

The facts in this case are not the subject of any dispute. The property is 101/1 Brunswick Street, Edinburgh EH7 5HR. The applicant is Ethan Guthrie who is the former tenant. The respondent is Jacqueline Kennedy who is the former landlord. The parties entered into a private residential tenancy in respect of the property which commenced on 1 September 2023. The rent was £1,000 per calendar month. The applicant paid £1,000 by way of deposit on 28 August 2024. The applicant vacated the property on 29 March 2024.

The respondent has been candid in accepting that she did not adhere to the regulations and failed in her duty to pay the deposit into an approved scheme as required. This is also evidenced by the schemes confirming the tenancy deposit was not protected. She stated that the issue was an oversight, beyond which she cannot explain. She has a total of four properties which she lets out, is aware of the regulations, and has always adhered to the regulations. She was apologetic and provided her personal apologies directly to the applicant.

The applicant had the full deposit returned to him on 5 May 2024, within 6 weeks of the tenancy ending. There was not therefore any material delay in the deposit being returned. He may have suffered a minor amount of inconvenience and stress but the issue was quickly resolved. His reliance upon other aspects of his personal life being directly adversely effected cannot be taken into account. There is no causation.

The tribunal was satisfied that the respondent did not comply 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 a landlord who has received the tenancy deposit to pay the deposit to a scheme administrator of an approved scheme within 30 working days of the beginning of the tenancy. The respondent failed to do this.

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.

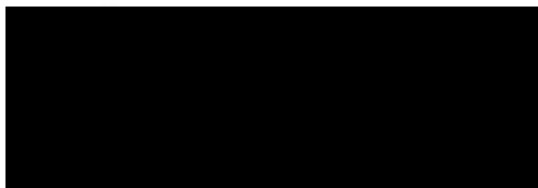
The Tribunal considered all relevant circumstances prior to making any Order under Regulation 10. The respondent is operating as a de facto commercial letting agent. She must act diligently and professionally. She failed to protect the deposit for around 5 months and failed to account to the applicant in a proper manner. It is her obligation as a residential landlord to do so. There are no aggravating circumstances however and the applicant has not suffered any pecuniary loss. The penalty clearly falls at the lower end of the range to be imposed.

In all the circumstances, the Tribunal ordered that the respondent pay to the applicant the sum of one times the amount of the tenancy deposit ie a total of £1,000. 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. The applicant's request for the maximum penalty to be imposed is grossly excessive and would be unduly harsh. Such request cannot be justified on the facts which exist.

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.



3 October 2024

Date