



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/24/3657

Re: Property at 44 Fraser Avenue, Newton Mearns, G77 6HP (“the Property”)

Parties:

Mr Martin Myers, Mrs Pauline Myers, 67 Shawood Crescent, Newton Mearns, G77 5ND (“the Applicant”)

Mr Scott Purdie, 35 The Avenue, Girvan, KA26 9DS (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants were entitled to an order for payment by the Respondent to the Applicants in the sum of £1050.00

Background

1. By application dated 7 August 2024 the Applicants applied to the Tribunal for an order under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicants submitted a copy of a tenancy agreement together with correspondence from the Respondent and proof their deposit had not been lodged in an approved Tenancy Deposit Scheme throughout their tenancy in support of the application.
2. By Notice of Acceptance dated 26 August 2024 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was served on the Respondents by Sheriff Officers on 29 January 2025.

3. By email dated 13 February 2025 the Respondents submitted written representations to the Tribunal.

The Case Management Discussion

4. A CMD was held by teleconference on 6 March 2025. The Applicant Mr Martin Myers attended in person and represented Mrs Myers. The Respondent attended in person.
5. After explaining to the parties the purpose of a CMD the legal member ascertained that it was agreed that the parties commenced a Short Assured tenancy in May 2017 that ended on 28 May 2024. It was also agreed that the Applicants had paid the Respondent a deposit of £700.00 at the commencement of the tenancy and that the Respondent had failed to lodge the Applicants' deposit in an approved Tenancy Deposit scheme for the duration of the tenancy.
6. There was a short discussion as to how long it had taken the Respondent to repay the deposit to the Applicants but it was agreed that the deposit had been repaid in full to the Applicants within a period of two weeks from the end of the tenancy.
7. The Tribunal referred the Respondent to his written representations and queried the relevancy of the submissions regarding the Respondent's intentions regarding the proposed sale of the property and subsequent re-letting of the property. The Respondent suggested that the Applicants were using the application as a vendetta against him for ending the tenancy and renting it at a higher rent as a way of getting back at him.
8. The Applicant advised the Tribunal that the Applicants had been concerned that their deposit had not been paid back in a reasonable fashion and that they had taken advice from the CAB and had been made aware that their funds had been vulnerable throughout the tenancy and that had been their reason for making the application. The Applicant submitted that the Respondent had a duty to look after his tenants and had failed in that duty. The Applicant also said that on moving out of the property the Applicants needed to find money for their move and that was hindered by the deposit not being in an approved scheme.
9. The Respondent said that at first, he had not been certain that the Applicants had paid a deposit and he had to look back his bank records to be satisfied that they had. He also said that the Applicants had returned to the property to carry out cleaning and tidy the garden in order that the deposit could be returned to them.
10. The Respondent advised the Tribunal that he had been a landlord for about 31 years and that he had one other rental property. He said that he always put tenants' deposits in an approved scheme and that on this occasion the failure had been due to an oversight on his part which he thought had somehow been caused by the Applicants taking over the tenancy from Mrs Martin's parents.

11. The Respondent confirmed that he understood the 2011 Regulations and that in the circumstances as the Applicants' deposit had not been lodged in an approved scheme in accordance with Regulation 3 and the Applicants had made a timeous application to the Tribunal under Regulation 9, the Tribunal must impose a financial sanction on the Respondent in terms of Regulation 10.
12. The Tribunal queried with both parties if they were satisfied that the Tribunal had sufficient information before it to make a decision without the need for a hearing and both parties agreed it did.

Findings in Fact

13. The parties entered into a Short Assured Tenancy in May 2017.
14. The Applicants paid the Respondent a deposit of £700.00 at the commencement of the tenancy.
15. The Respondent failed to lodge the Applicants' deposit in an approved Tenancy Deposit Scheme throughout the duration of the tenancy.
16. The tenancy ended on 28 May 2024.
17. The Applicants submitted an application to the Tribunal under Regulation 9 of the 2011 Regulations on 7 August 2024. The application is timeous.
18. The Respondent repaid the Applicants deposit in full to the Applicants within two weeks of the end of the tenancy.
19. The Respondent has been a landlord for about 31 years.
20. The Respondent has one other rental property.
21. The Respondent has not had a previous award under the 2011 Regulations made against him.

Reasons for Decision

22. It was not disputed that the Respondents were in breach of Regulation 3 of the 2011 Regulations and that the application was timeous. Regulation 10 of the 2011 Regulations provides that where there has been a breach of Regulation 3 and Regulation 9 has been satisfied, the Tribunal must impose a sanction of up to three times the deposit paid by the Tenant. Any award under Regulation 10 is required to reflect a sanction which is fair, proportionate and just given the circumstances (*Jensen v Fappiano* 2015 GWD 4-89). In *Tenzin v Russell* it was held that any payment in terms of Regulation 10 is the subject of judicial discretion after careful consideration of all the circumstances.

23. The Tribunal has taken into account that the Applicants' deposit remained unprotected for a period of seven years and that the Applicants were deprived of the opportunity of having the return of the deposit adjudicated upon under the tenancy scheme rules. Against that the Respondent did return the Applicants' deposit reasonably promptly albeit after making them return to the property to carry out some cleaning and gardening. The Tribunal has accepted that the Respondent did not wilfully or deliberately fail to lodge the deposit in an approved scheme. The failure to lodge the deposit was an oversight on the part of the Respondent. The Respondent was aware of his obligations and is an experienced landlord. He has not previously had a breach of the 2011 Regulations made against him. Although this was a serious breach given the length of time the Applicants' deposit was unprotected the Tribunal does not consider in all the circumstances that it would be appropriate to make an award at the upper end of the sanctions available to it. After carefully considering all of the circumstances the Tribunal considers that an award equivalent to one and a half times the Applicants' deposit is a just and proportionate amount to award the Applicants.

Decision

24. The Tribunal being satisfied it has sufficient information before it to determine the application without the need for a hearing finds the Applicants entitled to a payment by the Respondent to the Applicants in the sum of £1050.00.

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.

G.Harding

Legal Member/Chair

6 March 2025
Date

