



Notes on a Case Management Discussion of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of the Housing (Scotland) 2014 section 16 and Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/18/2276

Re: Property at 5/3 Torphichen Street, Edinburgh, EH3 8HX (“the Property”)

Parties:

Ms Wenjue Li, 35/5 Lutton Place, Edinburgh, EH8 9PF (“the Applicant”)

Ms Shaheda Ali, 11 Orchard Crescent, Edinburgh, EH4 2EY (“the Respondent”)

Tribunal Member:

Valerie Bremner (Legal Member)

Summary of Discussion

The Parties attended the Case management Discussion along with their representatives. The Applicant was represented by Miss Rachel Blacow and the Respondent was represented by Mr Shola Akinosho.

The Tribunal had sight of the Application, the tenancy agreement, correspondence from My Deposit Scotland, together with a letter from the Respondent’s representative which was accompanied by a number of the

papers in relation to the management of the tenancy between the parties and also a statement of account of funds held by Letslet, the Respondent's representative with My Deposit Scotland.

Parties were agreed that this tenancy agreement was one to which the Tenancy Deposit Schemes (Scotland) Regulations 2011 applied and therefore the Landlord was required to place the deposit paid by the Applicant in one of the approved schemes within 30 days of the start of the tenancy.

It was not in dispute that this had not been done until after the tenancy came to an end. The deposit was protected on 20th August 2018 and the deposit of £1950 was subsequently returned in full to the Applicant and the other tenants.

The Applicant's representative advised that a mistake within the Letslet office had led to the deposit not being protected. It was the practice of Letslet who dealt with the management of this tenancy for the Respondent to place a large amount of funds within their My Deposit Scotland Account and later allocate these to particular tenancies. The member of staff who was meant to pass on the information to Mr Akinosho the Respondent's representative that the Applicant and her co tenants had paid their deposit had not done so and this had not been picked up within Letslet. Mr Akinosho advised the Tribunal that a new system was now in place which meant he was advised as soon as a deposit was paid to allow for an account for the deposit to be created within My Deposits Scotland and the funds protected immediately.

The Respondent Ms Ali advised that she is the landlord of a number of properties and at the time of this tenancy she had 4 properties managed by Letslet who dealt with all aspects of the tenancies. She only found out about the deposit not being protected when papers were served for the Tribunal. She had every confidence in Letslet and had no other problems with them. If she had done she would have moved her properties to another agency. She was clear this was human error and stressed that no one had lost out and the deposit had been returned in full.

Findings in Fact

The Respondent failed to protect the deposit of the Applicant and the other tenants in a tenancy agreement for the property to which the 2011 Regulations apply for the whole period of the tenancy agreement, some 10 months. The Deposit was later protected and returned in full.

The Respondent had the tenancy managed by her representatives Letslet and they dealt with all aspects of the tenancy including the deposit. She was unaware that the deposit had not been protected and her other properties had been managed satisfactorily by Letslet.

The system to administer and protect deposits within Letslet was haphazard and it appeared that a simple error would not be picked up quickly. However a new system in place has brought about the situation where no unallocated funds are in the My Deposits Scotland account held by Letslet and all deposits held are protected.

Having regard to the circumstances here including the fact that the fault here was on the part of the landlord's agent and appears to have been a simple mistake by a member of staff and the fact that the system to collect deposits and protect them appears to have been improved the appropriate sanction is at the lower end of the scale.

Decision

The Tribunal imposed a sanction of £600 on the Respondent to be paid to the Applicant in respect of the failure to lodge the deposit within an approved deposit scheme within the required time limit.

Reasons

The Tribunal was satisfied that the requirements of the Tenancy Deposit Schemes (Scotland) Regulations had not been complied with an imposed an appropriate sanction in all of the circumstances.

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.

V. Bremner

Legal Member

14/12/18.

Date