



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 and Regulations 3 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2010

Chamber Ref: FTS/HPC/CV/19/3759

Re: Property at 118 Springfield, Edinburgh, EH6 5SD (“the Property”)

Parties:

Miss Karen Todd, 122 Crewe Road West, Edinburgh, EH5 2PE (“the Applicant”)

Ms Lynne Ann McTaggart, 295 Gilmerton Road, Edinburgh, EH17 7PR (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £1,000.

Background

By application, received by the Tribunal on 6 November 2019, the Applicant sought an Order for Payment under Regulations 3 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) in respect of the failure of the Respondent to lodge a tenancy deposit in an approved tenancy deposit scheme.

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties, commencing on 28 April 2016 at a rent of £650 per month with a deposit also of £650.

In the application, the Applicant stated that she had lived in the Property for 13 years and had vacated it on 30 September 2019. The Property had been left in a fit state, allowing for 13 years’ fair wear and tear. The Respondent had not, however, returned the deposit and the Applicant had ascertained that it had not been lodged in an approved tenancy deposit scheme as required by the Tenancy Deposit Schemes

(Scotland) Regulations 2011. As a result, she had had to make an application to the Tribunal for an Order for Payment to recover the deposit.

On 27 December 2019, the Tribunal advised the parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 17 January 2020.

The Respondent did not make written representations specific to the application, but stated that she believed it was within her rights to withhold the deposit in order to help make the Property habitable again when the Applicant moved out.

Case Management Discussion

A Case Management Discussion was held at Riverside House, Gorgie Road, Edinburgh on the afternoon of 29 January 2020. Both Parties were present. The Respondent accepted that the deposit should have been lodged in an approved scheme, but pointed out that the tenancy had begun 5 years before the tenancy deposit scheme came into existence. She freely accepted that she had been at fault and that she would be required to make a payment to the Respondent, but added that her regret was in not appointing professional agents to deal with the letting on her behalf, adding that to have done so would have incurred costs which she would have had to pass on to the Applicant by way of rent increases.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision.

Regulation 3(1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") states that a landlord must, within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme and provide the tenant with certain information required by Regulation 42. The liability to lodge deposits extends to tenancies that were already in place when the tenancy deposit scheme came into force.

Regulation 10 of the 2011 Regulations states that , if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal must order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit.

The view of the Tribunal was that, whilst the Respondent's failure to lodge the deposit had been a serious failing, it had not been done wilfully. That said, it had continued over a long period and had resulted in the Applicant having to make a separate application to the Tribunal in an attempt to recover the deposit. Accordingly, the Tribunal determined that a fair, just and proportionate amount to order the Respondent to pay to the Applicant was £1,000.

Decision

The Tribunal determined that the application should be decided without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £1,000.

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.

George Clark

Legal Member/Chair

29 January 2020

Date