



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

Chamber Ref: FTS/HPC/PR/18/0952

Re: Property at 25 Paxtone Crescent, Harthill, ML7 5RU (“the Property”)

Parties:

Miss Debbie Owl, 6, Drumclair Avenue, Falkirk FK1 3HE (“the Applicant”)

Mr Andrew Eadie, 24 Chuckethall Place, Livingstone EH54 8AN (“the Respondent”)

Tribunal Members:

David Preston (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined:

- **The Respondent had failed in his duty to pay the deposit paid by the Applicant to the scheme administrator of an approved scheme under Regulation 3(1)(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”); and**
- **Orders the Respondent to pay to the Applicant the sum of £495 in terms of Regulation 10(a).**

Background:

1. By application dated 29 March 2018 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 and Regulation 9 of the Regulations the Applicant sought an order for payment under Regulation 10.
2. By Notice of Acceptance dated 18 May 2018 a legal member of the First-tier Tribunal with delegated powers so to do, accepted the application for determination by the First-tier Tribunal.
3. A Case Management Discussion took place at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT on 9 August 2018. The parties attended the Discussion.

Findings in Fact:

4. The parties entered into a Short Assured Tenancy by Lease dated 8 June 2015. The lease was terminated by the Applicant giving Notice of termination dated 7 February 2018. The tenancy therefore subsisted for a period of 2 years and 8 months.

Representations:

5. The Applicant indicated that she had nothing to add to the terms of the application. In her application she sought an impartial adjudication with regards to the fair repayment of her deposit. By letter dated 15 May 2018 she clarified that the application was in regard to the failure of the Respondent to place the deposit in an approved scheme.
6. The Respondent indicated at the hearing that he had nothing to add to the written representations which had been submitted by him by letter dated 24 July 2018. The Applicant said that she took no exception to the Respondent's representations apart from some issues relating to his reference to water damage in the bathroom which related to alleged damage which it might have been suggested had been caused by her. She accepted that this was not a matter for the tribunal.
7. In his representations the Respondent accepted that he had no excuse for failing to place the deposit in a trust.
8. The Respondent said that he had not intended to become a landlord but had done so in part due to the economic situation and had made myself aware of some of the commitments of a landlord, but not all. He had previous tenants and there had been no issue under that tenancy. He had then entered into a further tenancy agreement with the Applicant.
9. The Respondent said that the Applicant had financial difficulties at the time and had not been in a position to pay the deposit due for a number of months after taking entry, but the deposit had eventually been paid. He had not paid it into a scheme.
10. The Respondent outlined some personal difficulties affecting him during the Applicant's period of tenancy and also some financial and personal difficulties being faced by the Applicant and made reference to a number of issues relative to damage caused by the Applicant to the property.
11. The Respondent said that he did not intend to rent the property in the future.

Reasons for Decision:

12. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the tribunal may do anything at a Case

Management Discussion which it may do at a hearing, including making a decision. The tribunal decided, on the basis of the information presented to it, to determine the application at the Case Management Discussion.

13. Regulation 10 of the Regulations provides that if the tribunal is satisfied that the landlord did not comply with the duty in Regulation 3 to place the deposit in a scheme within the time limits specified, which was admitted, the tribunal must order the landlord to pay to the tenant an amount not exceeding 3 times the amount of the deposit. Accordingly the only question for the tribunal is to determine the amount of the sanction.
14. In assessing the level of sanction the tribunal considered the representations by the Respondent and the decision of Sheriff Welsh in the case of *Jenson v Fappianno* 2015 GWD 4-89 at paragraphs [11], [12] and [18].
15. In this case the tenancy started on 7 June 2015 and was terminated by the tenant on 7 March 2018 a period of 2 years and 9 months. The deposit was not paid into an approved scheme at any point during the tenancy and was therefore unprotected throughout the tenancy.
16. There was nothing to suggest that there had been a wilful default or that he had systematically been in default in respect of a number of tenancies.
17. In this case, the Respondent had become involved in private letting somewhat unintentionally and while that does not absolve him of the duty to familiarise himself fully with all the obligations of a landlord, he did frankly accept his failure and accepted that the tribunal is required by the Regulations to impose a sanction. The Respondent's inexperience as a landlord cannot mitigate his responsibility to fulfil his obligations and commitments.
18. The deposit was not paid to a scheme at any time and the tenant was therefore unable to invoke the dispute resolution services under such a scheme to assess the repayment due to her. If the deposit had been paid into a scheme, albeit late, the Applicant would have been able to recover the deposit or a proportion of it and to receive the sanction resulting from the Respondent's failure.
19. The range of sanction open to the tribunal is up to a maximum of three times the amount of the deposit of £330 being a total of £990. The tribunal considers that in the light of the representations made, the level should be at the lower end of the scale, but also take account of the fact that the tenant has been unable to obtain repayment of any part or all of the deposit. Accordingly the tribunal considers that it would be fair, proportionate and just to sanction the Respondent for noncompliance by awarding the Applicant a sum equivalent to one and a half times the deposit (£495).

Decision:

20. The Respondent will pay to the Applicant the sum of £495 by way of sanction under Regulation 10(a).

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

David Preston

Legal Member/Chair

9 AUGUST 2018

Date