



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

Chamber Ref: FTS/HPC/PR/20/1474

Re: Property at 74/5 Mill Road, Bathgate, West Lothian (“the Property”)

Parties:

Mr Gerrit Joachim Alberts, residing at 35 Croft An Righ, Inverkeithing, Fife, KY11 1PF (“the Applicant”)

And

P&S Property’s 70 Mill Road, Bathgate, West Lothian, EH48 4BN (“the Respondent”)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has breached their obligations under regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Background

1. On 14 October 2019 the respondent let to the applicant the property at 74/5 Mill Road, Bathgate, West Lothian. A Tenancy agreement was entered into which required payment of a deposit of £725. The tenancy ended in May 2020.

The Case Management Discussion

2. A Case Management Discussion took place before the Tribunal by telephone conference at 10.00am on 23 September 2020. The Applicant was not present, the respondent was represented by Mr L Di Resta.

3. For the respondent, Mr Di Resta admitted that the applicant paid the deposit on 14 October 2019 but that the deposit was not paid into an approved scheme until 11 March 2020. Mr Di Resta explained that the respondent had employed a letting

agent and presumed that the letting agent had paid the deposit into an approved scheme. In March 2020 the respondent discovered that the deposit had not been paid into an approved scheme, and immediately secured the deposit monies. He explained that it was simply an error, the blame for which rests with a letting agent.

4. Both parties agree that the deposit was not lodged with an approved tenancy deposit scheme within 30 days of commencement of the tenancy. Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 tells me that, in light of that admitted fact, I must make a payment order against the respondent. I can dispose of this case today, without the need for a further hearing.

Findings in Fact

5. In October 2019 the respondent agreed to let the dwelling-house at 74/5 Mill Road, Bathgate, West Lothian to the applicant. A tenancy agreement was entered into setting out the agreed rental and requiring a deposit of £725. The tenancy agreement narrated that the deposit would be paid into an approved tenancy deposit scheme within 30 days of commencement of the lease.

6. Before taking entry the Applicant paid a deposit payment of £725 to the respondent's letting agent. Parties' agreed to end the tenancy in May 2020. The respondent only paid the deposit into an approved tenancy deposit scheme after holding the deposit funds in their own name for many months. At the termination of the tenancy the parties could not agree on the amount of deposit which should be repaid to the tenant. They await adjudication on their dispute.

7. The respondent had no intention of depriving the applicant of repayment, but ignored the terms of the lease they signed as landlord which (correctly) narrated that the deposit would be placed in an approved scheme within 30 days of the commencement of the tenancy.

Reasons for Decision

8. It is beyond dispute that a deposit of £725 was paid at the commencement of the tenancy. On the facts as I find them to be, the deposit was not paid into an approved scheme when it should have been.

9. This may have been the respondent's first experience as a landlord, and the respondent was let down by the letting agent they relied on, but the lease they signed reiterated the requirement to place deposits in an approved scheme with 30 days.

10. The respondent acknowledges their error. The respondent has no history of breaches of the 2011 Regulations. A full accounting for the deposit will be made. Against those mitigating factors I must balance the undisputed fact that the deposit was unprotected for many months.

11. The Applicant asked me to make a payment order. The purpose of the order is not to enrich the applicant. The purpose of the order is to punish the respondent; to

mark society's displeasure; to protect society and to ensure the enforcement of the 2011 Regulations in the future.

12. The amount of deposit was £725.00. For many months, the deposit was not protected. A payment order in the sum of £500 reflects the seriousness of the breach of the 2011 Regulations.

13. The appropriate level of payment order is £500.00

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant of Five Hundred pounds (£500.00) within 14 days of service of this order.

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.

Paul Doyle

Legal Member

23 September 2020