



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/20/1724

Re: Property at 2/1 57 Carron Street, Glasgow G22 6BB (“the Property”)

Parties:

Miss Desislava Mihova, residing at 1/1, 3 Fairburn Street, Glasgow, G32 7QA (“the Applicant”)

And

Dr Saad Mustafa Al-Adhami, residing at 3/2, 37 St Mungo Avenue, Glasgow, G4 0PH (“the Respondent”)

Decision

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

Background

1. In October 2019 the respondent let to the applicant the property at Flat 2/1, 57 Carron Street, Glasgow, G22 6BB. A Tenancy agreement was entered into which required payment of a deposit of £650. The tenancy ended when the applicant vacated the property on 9 July 2020.

The Case Management Discussion

2. A Case Management Discussion took place before the Tribunal by telephone conference at 10.00am on 15 October 2020. The Applicant was present. The respondent was neither present nor represented. The respondent has received notice of the hearing. He submitted written representations on 20 September 2020. I am satisfied that I can justly determine this case in the respondent’s absence.

3. The respondent's position is that the applicant paid a sum of money equivalent to 2 months rental on taking entry to the property. Half of that sum was the first month's rent, the remainder was security against performance of the applicant's obligations under the tenancy agreement but that did not represent a deposit. The respondent complains that the applicant ended the tenancy agreement prematurely and did not maintain prompt and regular payments of rental.

4. As a matter of both law and fact, the tenant paid a deposit of £650 on taking entry to the property. The tenancy agreement clearly identifies the payment as a deposit. The respondent admits that the deposit has never been paid into an approved tenancy deposit scheme.

5. 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

6. In October 2019 the respondent agreed to let the dwelling-house at Flat 2/1, 57 Carron Street, Glasgow, G22 6BB, to the applicant. A tenancy agreement was entered into setting out the agreed rental and requiring a deposit of £650.

7. Before taking entry the Applicant paid a deposit payment of £650 to the respondent. The respondent placed that money in an account in his name alone. Parties' agreed to end the tenancy on 9 July 2020.

8. At the termination of the tenancy the parties could not agree on the amount of deposit which should be repaid to the applicant. The respondent paid £70 to the applicant on 20 July 2020. He retained the rest of the deposit to clear arrears of rent which had accumulated during the tenancy.

Reasons for Decision

10. It is beyond dispute that a deposit of £650 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. Even though the tenancy agreement defines the payment of £650 as a deposit, the respondent still argues that the payment was not a deposit and that the Tenancy Deposit Schemes (Scotland) Regulations 2011 do not apply.

11. The respondent is wrong. He does not acknowledge his error. The tenancy agreement he produced for the applicant to sign clearly defines the payment as "Deposit". The deposit lay unprotected for the duration of the tenancy.

12. 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.

14. The amount of deposit was £650.00. A payment order equivalent to the one and a half times the value of the deposit reflects the seriousness of the breach of the 2011 Regulations.

15. The appropriate level of payment order is £975.00

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant of Nine Hundred and Seventy Five pounds (£975.00) 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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Paul Doyle

Legal Member

15 October 2020