

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section Sections 120-122 of the Housing (Scotland) Act 2006 and Regulation 3(1) of the Tenancy Deposit Scheme (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/18/1804

Re: Property at 308/3 Portobello High Street, Edinburgh, EH15 2DA (“the Property”)

Parties:

Ms Fleur Scheltdorf, 308/3 Portobello High Street, Edinburgh, EH15 2DA (“the Applicant”)

Mrs Tivendar Singh, 25 Wakefield Avenue, Edinburgh, EH7 6TN (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined, without a hearing, that the Respondent had failed to lodge with an approved tenancy deposit scheme the Applicant’s deposit in respect of the Property, as required by Regulation 3(1) of the Tenancy Deposit Scheme (Scotland) Regulations 2011, and that the Respondent should pay to the Applicant the sum of One Thousand One Hundred Pounds in respect of that failure.

Background

By application, received by the Tribunal on 17 July 2018, the Applicant sought an Order for payment by the Respondent to the Applicant of One Thousand Six Hundred and Fifty Pounds, being three times the deposit of £550 paid by the Applicant at the commencement of her tenancy of the Property. The Applicant contended that the Respondent had failed to lodge the deposit with any of the three approved tenancy deposit schemes within 30 days of the commencement of the tenancy and had still not so lodged the deposit.

The Parties were advised of a date set down for a Case Management Discussion and the Respondent was invited to make written representations to the Tribunal by 24 September 2018.

The Respondent did not make any written representations to the Tribunal, but requested the postponement of the Case Management Discussion from the scheduled date of 27 September 2018, as it coincided with a family wedding. The Tribunal agreed to a postponement to 8 October 2018.

Case Management Discussion

A Case Management Discussion took place on the morning of 8 October 2018. Both parties were present at the Case Management Discussion. The Applicant was represented by Ms Sara Marcioni and the Respondent was represented by her daughter Ms Suckver Singh.

The Applicant had no evidence to provide to the Tribunal apart from that contained in the application and the papers which accompanied it. These included a text to the Applicant in which the Respondent stated that the deposit was in her landlord deposit account which the Applicant would receive 5 days after she leaves the property as the Respondent would have to come out and check the flat fully.

The Respondent's representative told the Tribunal that the Respondent had been unaware of the legal requirement to lodge deposits with an approved tenancy deposit scheme and offered evidence that the Applicant's deposit was held, in cash, in a safety deposit box with Royal Bank of Scotland. The Respondent rented out 2 other flats and, whilst one of them did not involve a tenant's deposit, the other one did and it was held in the same way as the Applicant's deposit.

Findings in Fact

The Tribunal held that the Respondent had not lodged the deposit with any of the three approved tenancy deposit schemes.

Reasons for Decision

Rule 17(1)(d) 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 was satisfied that it had before it all the information it required to make a decision and that it would, therefore do so without a hearing.

Regulation 3(1) of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations"), which were in force before the tenancy of the Property commenced, states that a landlord must, within 30 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 under Regulation 42 of the 2011 Regulations.

Regulation 10 of the 2011 Regulations provides that if it finds 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 Tribunal noted that the Respondent had stated that she had been unaware of the requirement to lodge deposits, but ignorance of the law is no excuse, and the lease between the Parties specifically stated that the deposit would be paid into a tenancy deposit scheme within the timescales laid out in the 2011 Regulations.

The Tribunal was of the view that the deposit was not adequately safeguarded by being held in a safety deposit box, as it remained entirely within the control of the Respondent and the Applicant's ability to challenge any deductions which were made by the Respondent at the end of the tenancy was significantly compromised as a result. The Tribunal did, however, take into account the fact that the Respondent had taken steps to separate the deposit from her other funds and determined that it would be appropriate to reflect that in the amount it would order the Respondent to pay to the Applicant.

Decision

Having regard to all the information before it, the Tribunal decided to determine the application without a hearing, found that the Respondent had failed to comply with Regulation 3(1) of the 2011 Regulations and determined that the amount to be paid by the Respondent to the Applicant should be equal to 2 times the deposit, namely One Thousand One Hundred Pounds

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

8 October 2018

Date