



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in respect of an application in terms of Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the Rules”) for an Order for Payment under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/19/1962

Re: Property at 8/3 Roseburn Place, Edinburgh, EH12 5NN (“the Property”)

Parties:

Miss Madeleine Buchan, Miss Maxine Meighan, 9 2F2 West Montgomery Place, Edinburgh, EH7 5HA; 1/2 Ogilvie Terrace, Edinburgh, EH11 1NS (“the Applicants”)

Mrs Karen Rutherford, 37 Dovecot Road, Edinburgh, EH12 7LF (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member)

Decision

The Tribunal determined that the Respondents had not complied with Regulation 3 of the 2011 Regulations and made an Order of compensation amounting to ONE THOUSAND AND FIVE HUNDRED AND FIFTY POUNDS (£1,550.00) Sterling.

Background

1. By application dated 19 June 2019 (“the Application”), the Applicants applied to the Tribunal for an Order for Payment against the Respondent under Regulations 9 and 10 of the 2011 Regulations on the grounds that the Respondents had not complied with Regulation 3 of the 2011 Regulations.

2. The Application was accepted by the Tribunal and a Case Management Discussion (“CMD”) was fixed for 22 August 2019 at 10.00am at George House, 126, George Street, Edinburgh, EH2 4HH

Case Management Discussion

3. The CMD took place on 22 August 2019 at 10.00am at the said George House. The Applicants were both present and accompanied by Mr. Stuart Clement as a supporter in terms of Rule 11 of the Rules. The Respondent was present and represented by her son, Mr. Richard Rayner, and accompanied by her husband, Mr. Ronnie Rayner, as a supporter in terms of Rule 11 of the Rules.
4. I explained to the Parties their respective roles in terms of the Rules and explained the purpose of the CMD with reference to Rule 17 of the Rules.
5. The Parties agreed that the following facts were not in dispute:-
 - i) There had been a tenancy agreement between the Parties in respect of the Property, which tenancy commenced on or around 1 June 2017;
 - ii) A tenancy deposit of £775.00 was paid by the Applicants to the Respondent before the tenancy commenced;
 - iii) The tenancy deposit of £775.00 was paid by the Respondent to SafeDeposits Scotland on 1 June 2018, being outwith the mandatory time limit fixed by Regulation 3(a) of the 2011 Regulations;
 - iv) The Respondent did not notify the Applicants as she was required to do in terms of Regulation 3(b) of the 2011 Regulations and
 - v) The tenancy deposit had been repaid in full.
6. I explained to the Parties that, in terms of Regulation 10 of the 2011 Regulations, if the landlord has failed to comply with Regulation 3 of the 2011 Regulations, the Tribunal must make an Order and so the issue is one of the amount of the Order to be made. I explained to the parties that the options open to me were to adjourn the CMD and fix a Hearing of evidence in mitigation or I could deal with the matter at the CMD on the Parties' submissions. I adjourned the CMD to allow the Parties to consider this. The Parties agreed that their preference was to proceed at the CMD.
7. On behalf of the Respondent, Mr. Rayner advised me that the Respondent had failed to comply with Regulation 3 of the 2011 Regulations as she and her husband, who operate their businesses jointly, had both been too busy and had lodged the deposit as soon as they realised that they had not done so. He submitted that the Respondent had been renting the Property for 25 years and had always returned tenancy deposits in full. Mr. Rayner stressed that the

deposit was not at risk at any time and that the failure to comply was a genuine oversight because of busy schedules.

8. On behalf of the Applicants, Ms. Meighan advised me that she considered there were several irregularities concerning the Respondent's and her husband's roles as landlord and landlord's agent and that as an experienced landlord the Respondent and her husband as her agent should have taken greater care to comply with the 2011 Regulations. Ms. Meighan submitted that the penalty in terms of Rule 10 of the 2011 Regulations is intended as a sanction on landlords who fail to comply with Rule 3 of the 2011 Regulations.

Findings in Fact

9. From the Application and the CMD I found that the facts as set out in paragraph 5 hereof had been established and that the Respondent had failed to comply with Rule 3 of the 2011 Regulations.
10. From the CMD, I accepted that the Respondent may have failed to comply with Rule 3 of the 2011 Regulations as a genuine oversight and accepted the tenancy deposit had been lodged during the course of the tenancy and without prompting by the Applicants. I also accepted that the tenancy deposit was unlikely to have been at risk.
11. From the CMD, I accepted the Applicants' point that, as an experienced landlord, the Respondent and her husband as her agent ought to have taken greater care in complying with the 2011 Regulations.

Decision and Reasons for Decision

12. Having found that the Respondent had failed to comply with Rule 3 of the 2011 Regulations, I had regard to Rule 17(4) of the Rules which state that the Tribunal "may do anything at a case management discussion which it may do at a hearing, including make a decision" and, accordingly, I determined to grant an Order for payment in terms of Rule 10 of the 2011 Regulations.
13. In determining the amount of the Order, I had regard to the submissions made by and on behalf of both Parties. I took into account the fact that the tenancy deposit had been lodged during the course of the tenancy and without prompting by the Applicants and so the Respondent had sought to remedy her failure to comply with Regulation 3 of the 2011 Regulations at a relatively early opportunity. Nonetheless, I agreed with the Applicants that as an experienced landlord, the Respondent ought to have taken greater care in complying with the 2011 Regulations. I had regard to the purpose of the 2011 Regulations and took the view that the Regulation 10 of the 2011 Regulations

sanction is intended to be punitive in respect of a breach of Regulation 3 of the 2011 Regulations, and so determined that twice the amount of the tenancy deposit is appropriate in this matter. Had the Respondent lodged the tenancy deposit at a later date, I would have imposed an Order for that the full amount of thrice the tenancy deposit.

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.

Karen Moore

Legal Member/Chair

22 August 2019

Date