



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 3,9&10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”)

Chamber Ref: FTS/HPC/PR/20/2439

Re: Property at Flat 4/3 48 West Regent Street, Glasgow, G2 2RA (“the Property”)

Parties:

Mr Heidar Alaa, 11 Hopewell Street, London, SE5 7QS (“the Applicant”)

Mrs Susan Childs, Le Hamel, Pleinheume Road, Vale, Guernsey, GY6 8NP (“the Respondent”)

Tribunal Members:

Susan Christie (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application be refused.

Background

1. The application made under **Rule 103** of the FTT Rules of Procedure 2017 is dated 22 November 2020. It was accepted by the Tribunal on 6 January 2021 only in so far as it related to Rule 103.
2. A written response was received on 21 January 2021.
3. A Case Management Discussion (CMD) took place on 17 February 2021 at 2p.m. with the Legal Member.
4. A Hearing on 14 April 2021 was adjourned to allow further paperwork to be sourced and submitted by the Applicant from Letting Protection Scotland, MyDeposits Scotland and Safe Deposits Scotland to evidence no deposit had been paid into an approved scheme.
5. Three Directions in all had been issued to the parties at various times to obtain the paperwork necessary to allow a determination to be made on the facts of the case.

6. Both Parties had been given the option of seeking legal advice but did not. They were given an extract from the Regulations to consider in the CMD Note.
7. The application proceeded to a hearing today when both Parties provided the Tribunal with oral submissions. In addition, further paperwork was submitted by the Applicant, of consent. The Hearing concluded and the parties were advised that the Tribunal would issue a written Decision in due course.

Findings in fact

- I. The Property is owned by the Respondent.
- II. The Respondent engaged Better Homes Glasgow Ltd, as a letting agent company prior to the Applicant taking on a tenancy over the Property.
- III. The Respondent did not have a written contract with Better Homes Glasgow Ltd. She had agreed that they let out and manage the Property, pay any charges due on the Property and she would receive around £500 per month from them.
- IV. The Property was leased to the Applicant as his home with a date of entry of 22 August 2014.
- V. A Short Assured Tenancy Agreement was prepared by Better Homes Glasgow Ltd. It was signed on 25 July 2014 between Better Homes Glasgow Ltd as named landlord and the Applicant. It was due to run for 6 months from 22 August 2014 and become a month to month let after that if not terminated. The rent being £595 pcm and a stated 'rent in advance' payment of £900.
- VI. The Applicant paid Better Homes Glasgow Ltd £2735 on 23 July 2014. The breakdown stated in the paperwork stated this was for Rent x 3, Rent in advance £900, £50 acceptance fee, total due £2735.
- VII. The Applicant paid to Better Homes Glasgow Ltd £595 on 28 August 2014. The Tribunal was also satisfied that two further payments both of £595 were made to Better Homes Glasgow Ltd by the Applicant in November and December 2014.
- VIII. In January 2015 the Respondent contacted the Applicant to state she was the owner and had contacted him as she had received no rent from Better Homes Glasgow Ltd.
- IX. In response through e mails, the Parties then communicated, and the Applicant advised he had paid the sums to Better Homes Glasgow Ltd and that included a deposit of £900. The Respondent pursued Better Homes Glasgow Ltd for paperwork relating to unpaid sums due to her but also sought paperwork evidencing the lodging of the Deposit.
- X. Better Homes Glasgow Ltd provided the Respondent with a document that showed there was a tenancy deposit record with SafeDeposit Scotland but enquiries with them showed that the record was held in the name of Better Homes Glasgow Ltd and no funds had been paid in.
- XI. SafeDeposit Scotland held a note on their records of '£900 is to be paid to Safe Deposits'.
- XII. A Deposit was paid by the Applicant to Better Homes Glasgow Ltd as landlord of £900. It was never paid into an approved scheme.

- XIII. Better Homes Glasgow Ltd had an obligation under the Regulations to pay the deposit into an approved scheme within 30 working days of the beginning of the tenancy. They did not.
- XIV. A second Short Assured tenancy Agreement was signed on 25 February 2015 between the Respondent as named landlord and the Applicant and was due to run for 6 months from 22 February 2015 and become a month to month let after that. The rent being £595 pcm.
- XV. No Deposit was sought by the Respondent in the Short Assured tenancy Agreement signed on 25 February 2015 nor paid by the Applicant.
- XVI. The Applicants tenancy with the Respondent ended on 6 or 7 September 2020.
- XVII. The Landlord Registration Unit of Glasgow City Council were involved as were Trading Standards. Action was taken in the courts against Better Homes Glasgow Ltd. Both Parties had been witnesses and provided statements.
- XVIII. The Respondent is not the Landlord to whom a deposit of £900 was made.
- XIX. The Respondent had no duty in relation to tenancy deposits having never received a tenancy deposit from the Applicant.
- XX. The application is refused.

Reasons for Decision & Decision

The Tribunal had regard to all that was said by both Parties and the various items of paperwork submitted by them. It was clear to the Tribunal that on balance, both Parties had been let down by Mr Rahman from Better Homes Glasgow Ltd. They had both suffered a financial loss because of his mismanagement of funds received by him from the Applicant. The Applicant lost his deposit, and the Respondent received no income from the let between Better Homes Glasgow Ltd and the Applicant. Despite the considerable efforts that had been made to try to source the funds due, they had never been able to receive them and felt they had not received justice. They believed they were not the only people to have suffered at the hands of Better Homes Glasgow Ltd.

The Applicant raised this application believing he could recover the original deposit paid, from the Respondent. The Respondent had always stated to the Applicant she was not the original landlord and disputed she had any liability. Having considered all of the evidence and documents, the Tribunal concluded that the Respondent was not the “landlord” in the original Short assured tenancy, she had not received the tenancy deposit of £900 from the Applicant and therefore she could have no duty in relation to the tenancy deposit under regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The link between the Respondent as owner and the role of “landlord” in the original Short Assured Tenancy is not evidenced, nor can the Tribunal come to that conclusion from the undisputed facts. The application is refused. The decision of the Tribunal is unanimous.

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.

Legal Member/Chair

Date