



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

Chamber Ref: FTS/HPC/PR/20/2176

Re: Property at 9/2 Newton House, 457 Sauchiehall Street, Glasgow, G2 3LG (“the Property”)

Parties:

Mr Edmund Ngan, 2/L 33 Park Avenue, Dundee, DD4 6NE (“the Applicant”)

EE Student Living, 11 Broomgrove Road, Sheffield, England, S10 2LW (“the Respondent”)

Tribunal Members:

Helen Forbes (Legal Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicant in the sum of £250

Background

1. This is an application dated 14th October 2020, made in terms of Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The Applicant is seeking an order for payment of £750 in respect of the Respondent’s alleged failure to lodge a tenancy deposit of £250, paid on 25th February 2019, in an approved tenancy deposit scheme. A private residential tenancy between the parties commenced on 24th August 2019. The Applicant lodged a copy of the tenancy agreement, a bank statement and a copy of a notification from Safe Deposits Scotland (“SDS”) confirming that the deposit was lodged on 6th November 2019. The Applicant asked that the case be conjoined with another case with the same Respondent and the same facts – FTS/HPC/PR/2180.
2. A Case Management Discussion (“CMD”) took place by telephone conference on 22nd February 2021. The CMD was continued to allow service of the application on the correct Respondent, as issues had arisen in relation to the identification of the Respondent.

3. The Tribunal noted that the Respondent's representative admitted that the deposit had not been lodged timeously. Parties were informed that the Tribunal would expect to be addressed at the next CMD on the reason that the deposit was not lodged timeously, and any other relevant or mitigating circumstances; and the level of payment to which the Applicant would be entitled in terms of the Regulations.

The Case Management Discussion

4. A further CMD took place on 22nd March 2021. The Applicant was in attendance. The Respondent was not in attendance and was represented by Ms Kirsty Smith, K Letting.
5. Ms Smith said she is the sole director of the company, K Lettings, which acts as an agent for the Respondent. The company was set up almost five years ago. There are three members of staff. Ms Smith said the reason the deposit was not lodged timeously was due to a member of staff failing to carry this out. The member of staff left at the beginning of November 2020. Ms Smith picked up the mistake during an audit and immediately lodged the deposit. She is now carrying out all audits herself on a fortnightly basis to avoid any repetition of this mistake. The company deals mainly with student letting. There have been no other cases of failure to lodge deposits timeously.
6. The Applicant said the Respondent was dealing with many students from overseas and many of them were not aware of the rules in relation to deposits. There had been some hassle in getting his deposit back.
7. There was some discussion about issues in relation to claims for cleaning costs at the end of the tenancy. Although a deduction from the deposit had been made, the full deposit was eventually returned to the Applicant after adjudication by the tenancy deposit scheme.
8. The Applicant submitted that one times the tenancy deposit, a sum of £250, would be a suitable level of payment in this case.
9. Ms Smith said she accepted she owed the Applicant an apology. Her company produces an information sheet for foreign students, explaining matters in relation to the taking of a deposit and what is done with it. She had lodged the deposit as soon as reasonably practicable after discovery of the mistake. The deposit was unsecured for a period of around six weeks.

Findings in Fact

10.
 - (i) The parties entered into a tenancy agreement in respect of the Property that commenced on 24th August 2019 and ended on 28th August 2020;

- (ii) A tenancy deposit of £250 was paid to the Respondent by the Applicant on 25th February 2019.
- (iii) The deposit was not lodged with an approved tenancy deposit scheme within the 30 days required by the Regulations.
- (iv) The deposit was lodged with an approved tenancy deposit scheme on 6th November 2019.
- (v) The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.

Reasons for Decision

11. The Regulations were put in place to ensure compliance with the tenancy deposit scheme, and to provide the benefit of dispute resolution for parties. The Tribunal considers that its discretion in making an award requires to be exercised in the manner set out in the case *Jenson v Fappiano (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015* by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case. The Tribunal must consider the facts of each case appropriately.
12. The Tribunal took guidance from the decision of the Upper Tribunal UTS/AP/19/0020 which states: '*Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals.*'
13. The Tribunal considered this to be a serious matter, particularly where the Respondent is represented by a reputable and established agent that deals with a significant number of tenancies and deposits and is aware of the regulations. The Tribunal took into account the mitigating circumstances put forward by the Respondent's representative, including the fact that the mistake had been addressed as soon as it was discovered. There was no deliberate failure to observe the responsibilities and no denial of fault. The deposit was unprotected for a fairly short period of time of around six weeks.
14. The Tribunal did not find that this was a case at the most serious end of the scale that would justify an award of three times the tenancy deposit. Taking all the circumstances into account, the Tribunal decided it would be fair and just to award a sum of £250 to the Applicant, which is one times the tenancy deposit.

Decision

15. The Tribunal grants an order in favour of the Applicant for payment of the sum of £250 in terms of Regulation 10(a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

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

22nd March 2021
Date