



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”) and The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/20/2195

Re: Property at 34 Broomhouse Crescent, Edinburgh, EH11 3SZ (“the Property”)

Parties:

Mr Olusegun Johnson, 4 Barnhill Drive, Portlethen, Aberdeen, AB12 4WW (“the Applicant”)

Ian Gibbs, care of DJ Alexander, 1 Wemyss Place, Edinburgh, EH3 6DH (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member)

Decision (in absence of the Applicant)

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

Background

1. By application received on 16 October 2020, as subsequently amended, the Applicant applied to the Tribunal for an order for payment against the Respondent in respect of failure to carry out duties in relation to a tenancy deposit. The failure alleged was a failure to lodge the deposit with an approved scheme within the period of 30 working days of the start of the tenancy. Supporting documentation was lodged in respect of the application.
2. On 2 December 2020, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.

3. On 11 December 2020, a copy of the Application and supporting documentation was served on the Respondent by Sheriff Officer, together with intimation of the date, time and arrangements for a Case Management Discussion ("CMD") to take place by telephone conference call on 18 January 2021 at 2pm. Details of the CMD were also notified to the Applicant by letter dated 9 December 2020. Written representations were to be lodged with the Tribunal by 30 December 2020. Written representations were lodged with the Tribunal on behalf of the Respondent by email on 14 December 2020 which were circulated to the Applicant by email on 18 December 2020. No further communications have been received from the Applicant.

Case Management Discussion

4. On 18 January 2021, the Respondent's agent, Mr Alexander of DJ Alexander letting agents joined the telephone conference CMD at 2pm. The Legal Member delayed the start of the CMD for a few minutes to see if the Applicant joined the conference call but he did not.
5. After introductions and introductory remarks by the Legal Member, the Respondent's agent was asked to present the Respondent's position in respect of the application. He also answered some questions from the Legal Member.
6. The Respondent's agent referred to the written representations and supporting documentation he had lodged on behalf of the Respondent. He explained that the tenancy start date was 24 October 2019 and that the deposit of £300 paid by the Applicant was deposited with My Deposits Scotland, an approved scheme, on 15 November 2019 which was within 30 days of the start of the tenancy. The Applicant was advised of this by letter dated 19 November 2019. However, during the course of the tenancy, DJ Alexander made a commercial decision to move all their tenancy deposits from My Deposits Scotland to Safe Deposits Scotland, including the Applicant's deposit of £300. This was withdrawn from My Deposits Scotland and then lodged with Safe Deposits Scotland on 12 March 2020. Unfortunately, the paperwork from Safe Deposits Scotland lodged by the Applicant in support of his application did not make it clear that the deposit may have been transferred to them from another scheme and stated that the deposit had been lodged with them late. This seems to have prompted the Applicant to lodge this application on the basis that he had been told that his tenancy deposit had not been lodged in the scheme until 12 March 2020, considerably after the 30 day period allowed from the start of the tenancy. DJ Alexander have taken this up with Safe Deposits Scotland and the Respondent's agent confirmed that Safe Deposits Scotland have/are now changing the wording of the paperwork they issue in this regard. Accordingly, the Respondent's position, as supported by the documentation lodged on his behalf, is that the Applicant's deposit was lodged timeously with a scheme and that the current application should be refused.
7. In response to questions by the Legal Member, the Respondent's agent confirmed that a dispute had arisen between the parties at the end of the tenancy regarding the return of the deposit. The dispute has partially been decided by way of a "pre-dispute award" of £89 which has already been paid

out by Safe Deposits Scotland to the Respondent. This is the reason that, although the documentation from Safe Deposits Scotland confirms that the whole deposit of £300 was lodged with them on 12 March 2020, the balance still held by them as at 9 December 2020 had reduced to £211. As far as Mr Alexander is aware, the remainder of the dispute concerning the deposit has yet to be decided by Safe Deposits Scotland.

Findings in Fact

1. The Respondent is the landlord of the Property.
2. The Applicant was the tenant of the Property by virtue of a Private Residential Tenancy commencing on 24 October 2019 and ending on 31 July 2020.
3. The Applicant's tenancy deposit of £300 was lodged with My Deposits Scotland on 15 November 2019.
4. The Applicant's tenancy deposit of £300 was subsequently withdrawn from My Deposits Scotland and transferred to Safe Deposits Scotland on 12 March 2020.
5. The tenancy deposit of £300 remained with Safe Deposits Scotland throughout the remainder of the tenancy.

Reasons for Decision

6. The Applicant has not submitted any information contrary to the Respondent's written representations and supporting documentation lodged with the Tribunal, and did not attend the CMD, having been properly and timeously notified of same.
7. The Legal Member was satisfied from the written documentation lodged on behalf of the Respondent, together with the Respondent's agent's oral submissions made at the CMD, that the Applicant's tenancy deposit had been lodged timeously with an approved tenancy deposit scheme in terms of Regulation 3 of the 2011 Regulations.
8. In these circumstances, the Legal Member therefore concluded that the application does not require to go to an evidential hearing and that the order for payment sought by the Applicant could properly be refused at the CMD.

Decision

The Legal Member accordingly determines that the payment order sought should be refused.

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.

Nicola Weir

Legal Member/Chair

18 January 2021
Date