

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 Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations (Regulations)

Chamber Ref: FTS/HPC/PR/19/2366

Re: Property at 60 Clarion Crescent, Glasgow, G13 3LG (“the Property”)

Parties:

Mr Anthony McDaid, 42 Millhouse Drive, Glasgow, G20 0UE (“the Applicant”)

Mr Robert Geelan, 60 Clarion Crescent, Glasgow, G13 3LG (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the Applicant the sum of £600 by way of sanction under Regulation 10(a) of the Regulations.

Background

This is an application under Regulation 9 of the Regulations and Rule 103 of the Tribunal Procedure Rules in respect of an alleged failure by the Respondent to protect a tenancy deposit in respect of the Property.

The Tribunal had regard to the following documents:

1. Application received 26 July 2019;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 2 April 2018;
3. Written Representations received from the Respondent by email of 4 October 2019.

Case Management Discussion (CMD)

The case called for a CMD on 18 October 2019. Both Parties were present and represented themselves.

The Parties agreed the following facts:

1. the PRTA had commenced on 2 April 2019;
2. a Deposit of £600 had been paid by the Applicant;
3. the PRTA had ended on 11 July 2019;
4. The Applicant had received return of £500 of the Deposit by mutual agreement;
5. The mutual agreement had not expressly referred to the failure to protect the deposit.

The Respondent's position was that there had been an agreement reached between the Parties surrounding return of the deposit. The Respondent accepted he had not protected the deposit. He had returned £500 of the £600 of the deposit to the Applicant after agreement with him.

The Respondent has initiated separate proceedings before the Tribunal seeking compensation for damage, repairs and cleaning of the Property. He asked the Tribunal to hear this application along with the proceedings he has raised so that any sums may be offset.

The Respondent was an experienced Landlord of some 27 years. He was aware of the Regulations and the requirement to protect the Deposit. He let 2 other Properties none of which had a Deposit. He accepted that Clause 10 of the PRTA obliged him to protect the Deposit in addition to the duty under the Regulations.

In mitigation, the Respondent explained that there had been various life factors which had got in the way of his compliance. He had been abroad and there had been personal issues.

The Applicant's position was that the case should proceed and not await the outcome of the civil case initiated by the Respondent. He had reached an agreement about return of the deposit and not about any ability to pursue an application under the Regulations. He had sought advice from Shelter and the two matters were distinct.

The Tribunal considered that it had sufficient information upon which to reach a Decision now and that the procedure had been fair. The Tribunal ascertained that the civil proceedings referred to by the Respondent had not yet reached acceptance stage.

It did not appear to be in accordance with the overriding objective to delay matters and in any event the two actions were distinct and any sums found due could not be offset in the Tribunal proceedings.

The Tribunal then considered the Parties submissions and the documentary evidence. The Tribunal made the following findings in fact:

1. The Parties entered in to a PRTA of the Property commencing 2 April 2018;
2. The Deposit paid by the Applicant was £600;
3. The monthly rent was £600;

4. The Respondent did not pay the Deposit into one of the approved Schemes;
5. The PRTA ended on 11 July 2019;
6. The Applicant received the sum of £500 by mutual agreement from the Respondent in respect of the Deposit;
7. The agreement in respect of the return of the Deposit did not include any waiver or settlement of the Applicant's ability to raise proceedings under the Regulations;
8. The Respondent was an experienced Landlord of 27 years who let 2 other Properties in addition to the Property;
9. The Respondent was aware of the requirement to protect the Deposit;
10. Clause 10 of the PRTA required the Respondent to protect the Deposit;
11. Personal issues had distracted the Respondent from compliance with his obligations under the Regulations.

Reasons

The Tribunal had regard to, and adopted the approach of, the Court in ***Russell-Smith and Others v Uchegbu [2016] SC EDIN 64***. The Tribunal considered what was a fair, proportionate and just sanction in the circumstances of the case, always having regard to the purpose of the Regulations and the gravity of the breach. Each case depends upon its own facts and in the end of the day the exercise by the Tribunal of its judicial discretion is a balancing act.

The Tribunal weighed all the factors and found it to be of significance that the Deposit had been unprotected for 15 months (the entire duration of the PRTA); the PRTA Clause 10 required the Respondent to protect the Deposit; the Respondent was an experienced Landlord and was aware of the Regulations; the Respondent had been distracted by personal issues; the Deposit had been returned by agreement of the Parties and the Applicant had suffered no prejudice.

Weighing all of these factors the Tribunal found the breach to be at the lower end of the scale and imposed a sanction of £600 which it considered to be fair, proportionate and just.

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.

18 October 2019

Legal Member/Chair

Date