



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/18/3435

Re: Property at 50 Cardwell Road, Gourock PA19 1UNrton Road, Glasgow, G13 1BH (“the Property”)

Parties:

Ms Lyndry Nolan, 0/1 45 Robertson Street, Greenock PA15 8QD (“the Applicant”)

Mr Alvin Yousif, 49G Bellshaugh Gardens G12 0SA (“the Respondent”)

Tribunal Member:

David Preston (Legal Member)

Decision:

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:

- **The Respondent had failed in his duty to pay the deposit paid by the Applicant to the scheme administrator of an approved scheme under Regulation 3(1)(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”); and**
- **Orders the Respondent to pay to the Applicant the sum of £550 in terms of Regulation 10(a).**

Background:

1. **By application dated 12 December 2018 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 and Regulation 9 of the Regulations the applicant sought an order for payment under Regulation 10.**
2. **By Notice of Acceptance dated 7 March 2019 a legal member of the First-tier Tribunal with delegated powers so to do, accepted the application for**

determination by the First-tier Tribunal and appointed the case to a Case Management Discussion ("CMD").

3. A CMD took place at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT on 23 April 2019. Both parties attended on their own behalf.

Discussion.

4. The parties advised that the tenancy had commenced in June 2006 and had ended in November 2018. The landlord had been Mr James Dornan who had died in 2012. Prior to his death, the respondent had been informally involved with the tenancy arrangements, but Mr Dornan had taken principal responsibility for it. On his death the respondent had become responsible as landlord.
5. The applicant advised that at the end of the tenancy she had received £250 from the deposit after deduction for damage to the property although she complained that she had difficulty in obtaining details of the deductions. The tribunal advised that the return of the deposit was a separate matter from the landlord's duty to lodge deposits with an approved scheme.
6. The tribunal noted that the failure here was principally down to the failure of Mr Dornan to lodge the deposit when the Regulations came into force, which he had failed to do. However, notwithstanding that failure, the respondent had failed to ensure that his obligations as landlord had been implemented when he assumed responsibility on his partner's death.

Reasons for Decision:

7. Rule 17(1)(d) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the Tribunal "*may do anything at a case management discussion which it may do at a hearing, including making a decision*". The Tribunal was satisfied that it had before it all the information it required to make a decision and that it would, therefore do so without a hearing.
8. Regulation 47 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations"), provides transitional arrangements for tenancy deposits which had been paid prior to the commencement of the Regulations. In the present case, the deposit had not been lodged with a scheme at any point.
9. Regulation 10 of the 2011 Regulations provides that if the tribunal finds that the landlord did not comply with any duty in Regulation 3, the Tribunal must order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit.
10. The tribunal is required to exercise discretion in deciding what level of order is appropriate, subject to the maximum of three times the amount of the deposit

which would be £1650. This case has come about as a result of an oversight on the part of the respondent who had become the responsible person on the unfortunate death of Mr Dornan.

11. However, the deposit was unprotected in terms of the 2011 Regulations for the period from the coming into force of the Regulations and the end of the tenancy and she had been denied the opportunity to make use of the dispute resolution provisions under the tenancy deposit system.
12. The tribunal was mindful that there was nothing to suggest that the respondent's failure had been wilful, or that he had systematically been in default in respect of a number of properties.
13. In the whole circumstances presented to the tribunal, it considered that while any default of this sort is a serious matter, this failure was not at the most serious end of the scale which would attract the maximum sanction of three times the deposit. It also had regard to the mitigating factors put forward by the respondent and considers that the fair, proportionate and just sanction in this case, having regard to the maximum sanction available, is the sum of Five hundred and fifty pounds (£550).

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.

David Preston

23 April 2019