



Dire

tor

Thor

1921,

Housing and Property Chamber First-tier Tribunal for Scotland



Statement of Decision under Rule 38 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (contained in Schedule 1 of the Chamber Procedure Regulations 2017 (SSI No 328)) (“the Procedure Rules”) in relation to a request for permission to appeal a decision under 46(3)(a) of the Tribunals (Scotland) Act 2014

in connection with

Chamber Ref: FTS/HPC/PR/18/3464

Property Address: 3 (PF1) Belgrave Terrace, Edinburgh EH12 6XG (“the property”)

The Parties: Mr William Wood, Mrs Barbara Wood, Flat 3, Elm House Court, Denholm, Hawick TD9 8PG (“the Applicant”)

Mrs Gillian Johnston, Yhanbank, Eliots Park, Peebles EH45 8HB (“the Respondent”)

Tribunal member: Mr Mark Thorley (chairing legal member)

1. DECISION

The Tribunal refuses permission to appeal in terms of Rule 38 of the Procedure Rules.

2. BACKGROUND

- i. An application was made on behalf of the applicants by the Community Help and Advice Initiative for an order for payment under the Tenancy Deposit Schemes (Scotland) Regulations 2011.
- ii. Intimation of the Case Management Discussion scheduled for 7 March 2019 was sent out to both the applicants’ representative and to the respondent.
- iii. No application was made by the applicants’ representative to adjourn the hearing fixed for 7 March 2019. On 7 March 2019 the respondent appeared along with her partner and her sister. There was no appearance by the respondent or the respondent’s representative. Contact was made by telephone to the applicants’ representative’s office to check whether anyone was due to attend but no information could be provided.
- iv. The Tribunal was of the view that it had sufficient information contained within the case papers along with the representations provided by the

respondent to deal with the matter. On 7 March 2019 the Tribunal found that the respondent should make payment to the applicants of the sum of £50.

3. APPLICATION FOR PERMISSION TO APPEAL

An application for permission to appeal the decision has been sought by the applicants through their representatives. The appeal is based on an averred error in law. Specifically that the Tribunal misdirected itself as to the factors to be considered in an assessment of the level of penalty to be awarded under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

4. REASONS FOR DECISION

The breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 was admitted by the respondent. She accepted that she had failed to place the deposit within the appropriate scheme. She set out a list of mitigatory factors. These were as follows:-

- (a) That the tenancy had commenced prior to the Regulations coming into place.
- (b) That she only rented out this singular property.
- (c) That she did not have particular experience of renting property.
- (d) That the full deposit was returned to the applicants on the date of the termination of their tenancy.
- (e) That the applicants had not "lost out" on any of their deposit.

It was noted that the power of the Tribunal as to what sum "not exceeding" three times the amount of the tenancy deposit. It was accordingly open to the Tribunal to award such lesser sum as was appropriate.

Having considered all the circumstances of the case, and having considered the note in seeking permission to appeal the application is refused.

The Tribunal considered all information that was available to it.

The Regulations themselves confirm the following:

10. If satisfied that the landlord did not comply with any duty in Regulation 3 the Sheriff –
- (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and
 - (b) may, as the Sheriff considers appropriate in the circumstances of the application, order the landlord to
 - (i) pay the tenancy deposit to an approved scheme; or
 - (ii) provide the tenant with the information under Regulation 42.

There are no prescribed "factors" to be considered in the assessment.

The Tribunal considered all information as provided to it.

In the circumstances the application for permission to appeal is refused.

APPEAL PROVISIONS

A landlord aggrieved by the decision of the Tribunal may seek permission to appeal to the Upper Tribunal for Scotland on a point of law only. That party must seek permission to appeal within 30 days of the date the decision was sent to them. The request for permission to appeal must be in writing and you may wish to consult the Scottish Courts and Tribunals Service website which includes an application form with information on the details required.

A decision of the First-tier Tribunal relating to a permission to appeal request cannot be appealed or reviewed.

1. Where a party seeks permission to appeal and this permission to appeal is refused, the decision will be treated as having effect from the day on which the refusal was made (unless the party then seeks permission from the Upper Tribunal to appeal the decision. In that event, if permission to appeal is refused, the decision is treated as having effect from the day on which the Upper Tribunal refuses permission.)

2. If permission to appeal against the decision of the First-tier Tribunal is granted, the effect of the decision and of any order made in consequence of it is suspended until the appeal is abandoned or finally determined by the Upper Tribunal. In the event that the decision is upheld, then the decision will be treated as having effect from the day on which the appeal is abandoned or determined.

.....
Mark Th
Chairing Legal Member of the Tribunal
Dated: 24 April 2019