



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 and Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

Chamber Ref: FTS/HPC/PR/18/1360

Re: Property at 34H Locks Street, Coatbridge, ML5 3RT (“the Property”)

Parties:

Miss Sylwia Zarebska, Mr Krzysztof Skowron, 10 Bankhead Place, Airdrie, ML6 8TN (“the Applicants”)

Mr Huasheng Huang, 16 Greenways, Esher, Surrey, KT10 0QD (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member) and David Wilson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) being satisfied that the Respondent as landlord of the property at 34H Locks Street Coatbridge, Glasgow, ML5 3RT did not comply with any duty in Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011, makes an order for the Respondent to pay to the Applicants the sum of six hundred and eighty five pounds 50 pence (£685.50).

This is a hearing in connection with an application in terms of Rule 103 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 ‘the rules’ for an order for payment where a landlord has not paid the deposit into an approved scheme.

A case management discussion on 18 December 2018 was adjourned to today's date and the tribunal made the following directions:

The Applicants are required to provide:

- 1. Any evidence showing or tending to show that the tenancy came to an end on or around the 19 April 2018.**

2. Any evidence that the Applicants paid a deposit of £475 to the Respondent's agents on or around 19 October 2017.
3. Any evidence that the Applicants paid rental payments to the Respondent's agents for the property between October 2017 and April 2018.
4. Any evidence of text messages sent by the Applicants to the Respondent's agents around April 2018 seeking the return of a deposit. .
5. Any evidence of text messages sent by the Applicant's representative to the Respondent's agents seeking the return of a deposit and any written reply received.

The tribunal had before it the copy documents as narrated in the CMD note of 18 December 2018.

In addition, the tribunal had a copy of an email from Mr Melvin to the Tribunal administration dated 10 January 2019 with enclosures, in compliance with the tribunal directions.

Mr Melvin attended the hearing as representative for the two applicants who also attended. Ms Vicki McGuire from Jewel Homes attended as the representative for the respondent. There was also an interpreter for the applicants, Ms Ada Lebiezinska.

Preliminary matters

The tribunal sought to ascertain that the parties had received the CMD note and directions and that Ms McGuire had received intimation of the applications written productions. Ms McGuire had not had sight of any of these documents and Mr Melvin had similarly not received the CMD note or directions. He had made a written note of the directions himself and was therefore able to send in the necessary documents.

The tribunal adjourned for a short time to enable the parties to obtain copies of all of the documents.

When the tribunal reconvened Ms Mc Guire very helpfully stated that:

- (a) She was not disputing on her client's behalf that the tenancy came to an end around the 19 April 2018.
- (b) She accepted that the applicants have lodged sufficient evidence to substantiate that they paid a deposit to her client's previous letting agent for the property.

This being the case, the tribunal was satisfied that this was a timeous application. The tribunal then proceeded to hear submissions from both representatives regarding the severity of the breach.

Submissions on behalf of the respondent.

The respondent is the landlord of three properties. He had a dispute with his previous letting agent and the rent for this property was not passed on after January 2018 despite the fact that the applicants were residing in the property and paying rent until April 2018. The deposit is not referred to in the lease and if a deposit was taken, which seems to be the case based on the documents lodged, this was not passed on to the landlord and he was not aware it was taken. As soon as the respondent learned of the application he made an offer to the applicants' representative to return the sum of £475. The offer was made in November 2018 and it was not accepted.

Submissions on behalf of the applicants.

Mr Melvin invited the tribunal to firstly make an order for the deposit to be lodged in a scheme so that ultimately his clients could get their deposit back.

In addition, he sought a penalty up to three times the deposit. He made reference to the letter lodged from the respondent's English solicitors to the previous letting in December 2017. Mr Huang was seeking information about a possible tenancy deposit for this and the other two properties. He was therefore alive to the possibility that a deposit may have been taken and not lodged in the scheme but he does not appear to have followed this letter up.

Findings in fact

1. The tribunal is satisfied that the applicants paid a deposit of £475 to the respondent, via his letting agents, in October 2017.
2. The tribunal is satisfied that the applicants rented the property at 34H Locks Street Coatbridge ML5 3RT, "the property" from 19 October 2017 until 19 April 2018 from the respondent as landlord of the property.
3. The tribunal is satisfied that the respondent is the owner of the property and he instructed his letting agent, Source to Let to lease the property to the applicants.
4. The tribunal is satisfied that the deposit was not paid in to a recognised deposit scheme and the landlord did not provide details of the scheme or a

statement that he is or has applied to be entered in the register of landlords maintained by the local authority, as required by regulation 42.

5. The tribunal is satisfied that the tenancy came to an end around 19 April 2018..
6. The tribunal is satisfied that the deposit has not been returned to the applicant by the respondent.

Reasons

After the preliminary hearing, it was agreed that there has been a breach of the regulations and the tribunal had then to consider the severity of the breach.

The tribunal considered the terms of the regulations. The tribunal noted that the respondent's previous agents may have failed to lodge the deposit on his behalf and may have failed to account to either the respondent or the applicant for the deposit. In any event, the obligation to lodge the deposit in an appropriate scheme in terms of the regulations is the landlord's obligation, and therefore the respondent's in this application. Regulation 3 provides:-

A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 days of the beginning of the tenancy, pay the deposit to the scheme administrator of an approved scheme. And provide the tenant with the information required under regulation 42.

The tribunal reviewed all of the recent cases regarding tenancy deposit schemes and noted that in the case of Kirk-v-Singh sheriff Jamieson states

The defender, a registered landlord, acted through his agent. Although that ignorance is no excuse, it is a factor to be taken into account in the exercise of my discretion.

In that case the deposit was returned to the tenant at the end of the tenancy unlike this case.

Sheriff Jamieson in Singh was mindful of the need to:-

proceed to impose a sanction which is "fair , proportionate and just having regard to the seriousness of the noncompliance.

The tribunal, having perused the documents and taking into account the representations made on behalf of both parties, is satisfied that the respondent failed

to comply with all of his obligations in terms of regulation 3. It appears that the respondent's previous agents may have let him down and that the failure by the respondent may not have been wilful. The respondent should have been on his guard in December 2017 that there may have been a deposit lodged for the lease of the property. He did however make an offer to return the deposit in November 2018 when he became aware of this application. The tribunal considered that a penalty of one and a half times the deposit, namely £685.50 was fair proportionate and just in all of the circumstances.

The tribunal decided not to make an order for the deposit to be lodged now. The tribunal did not consider this was appropriate since the respondent has not actually had access to the deposit. The tribunal did not consider it was fair to lodge the deposit at this stage.

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.

Lesley Ward

v

Lesley Ward Legal Member

21 February 2019