



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 120-122 of the Housing (Scotland) Act, Section 16 of the Housing (Scotland) Act 2014 and Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Chamber Ref: FTS/HPC/PR/19/0030

Re: Property at 20 Hay Avenue, Edinburgh, EH16 4AQ (“the Property”)

Parties:

Ms Esther Fernandez Arias, 13 Carlowrie Avenue, Dalmeny, South Queensferry, Edinburgh, EH30 9TY (“the Applicant”)

Mr Tasaddaq Hussain, Mrs Ferzana Hussain, 13 Myredale, Bonnyrigg, Midlothian EH19 3NW (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted without a hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £2,000.

Background

By application, received by the Tribunal on 8 January 2019, the Applicant sought an Order for Payment in respect of the failure by the Respondent to lodge a tenancy deposit of £800 in respect of the Property with an approved tenancy deposit scheme. The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties commencing on 15 April 2016 and providing for payment of a deposit of £800. The Applicant also provide the Tribunal with copies of e-mails from SafeDeposits Scotland (dated 28 February 2019), Letting Protection Service Scotland (dated 27 February 2019) and MyDeposits Scotland (Dated 25 February 2019) all confirming that the Applicant’s deposit in respect of the Property had not been lodged with them.

In her application, the Applicant stated that the tenancy had ended on 1 December 2018 and that the Respondent had since then refused to refund the deposit to her, claiming that deductions from it should be made.

By letter dated 11 April 2019, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 29 April 2019. Due to inability to serve papers on the Respondent timeously, the Case Management Discussion was cancelled and rescheduled for 24 June 2019. Sheriff officers had reported that the Respondent was no longer living at the address given in the application.

On 24 June 2019, sheriff officers confirmed that service by advertisement on the Respondent of the letter containing details of the Case Management Discussion arranged for 24 June 2019 had been carried out on the Tribunal's website between 22 May 2019 and 24 June 2019. The Tribunal was satisfied that intimation of the Case Management Discussion was deemed to have been served on the Respondent in accordance with Rule 6A of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Scotland Regulations (as amended)

The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held at George House, 126 George Street, Edinburgh on the morning of 24 June 2019. The Applicant attended and was supported by Ms Nicola McLay. The Respondent was not present or represented.

The Applicant confirmed the facts as stated in her application and told the Tribunal that she had paid the deposit in cash. She had had to find the money to meet the deposit for her present flat and this had caused her financial hardship which might have been avoided. She had also spent months in text correspondence with the Respondent trying unsuccessfully to secure repayment of the deposit.

Reasons for Decision

Rule 17 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 and documentation it required and that it would determine the application without a hearing.

Under Regulation 3(1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") a landlord must within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme and provide the tenant with certain information required by Regulation 42 of the 2011 Regulations. Regulation 10 of the 2011 Regulations provides that if satisfied 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.

The Tribunal noted that there had been a lengthy series of text messages between the Parties after the Applicant vacated the Property, in which the Respondent was refusing to refund the deposit, alleging that that the Applicant was responsible for making good defects to the Property and for redecoration, matters which the Applicant disputed. The Applicant had been put to considerable inconvenience in having to conduct this correspondence directly with the Respondent.

The Applicant had also advised the Tribunal at the Case Management Discussion that she had been required to pay a deposit for the flat she had rented after she

vacated the Property and that the fact that she did not have access to the deposit from the Property to help fund this had caused her financial hardship.

The Tribunal could not speculate on whether all or any part of the deposit would have been refunded to the Applicant, had it been lodged with one of the approved tenancy deposit schemes, but the whole purpose of the 2011 Regulations and the tenancy deposit schemes regime is to ensure that both parties can make representations to an independent body which can adjudicate on the matter. That opportunity was denied to the Applicant by the failure of the Respondent to comply with the requirements of the 2011 Regulations.

The Tribunal noted that at no point in the exchange of text messages had the Respondent recognised or sought to explain the failure to lodge the deposit and the Respondent had made no written representations to the Tribunal and had chosen not to attend or be represented at the Case Management Discussion. As a result, the Tribunal was not being asked by the Respondent to consider any mitigating facts or circumstances in arriving at a decision on the amount the Tribunal was going to order the Respondent to pay to the Applicant. The Applicant's money had been at risk throughout the period of the tenancy and remained at risk, entirely due to the failure of the Respondent to comply with the legal duty imposed on the Respondent as a landlord.

Having considered all the evidence presented to it, the Tribunal determined that the Respondent's failure was established and had been compounded by the Respondent's conduct after the Applicant vacated the Property. It was a serious failure on the part of the Respondent which had caused the Applicant unnecessary inconvenience, stress and financial hardship and this was reflected in the amount of the Order the Tribunal proposed to make.

Decision

The Tribunal determined that the application should be granted without a hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £2,000.

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.

G Clark

Legal Member/Chair

Date

24 June 2019