



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 2006 and Regulations 3(1) and 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (in the absence of the Parties)

Chamber Ref: FTS/HPC/PR/18/1452

Re: Property at 8/7 Piershill Terrace, Edinburgh, EH8 7EU (“the Property”)

Parties:

Mr Greig Kelbie, Mrs Caitriona Carson, 20/5 Bailie Terrace, Duddingston, Edinburgh, EH15 3BU; 20/5 Bailie Terrace, Duddingston, Edinburgh, EH15 3BU (“the Applicant”)

Mrs Judith Stewart, 66 The Causeway, Edinburgh, EH15 3PZ (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined, without a hearing, that the Respondent had failed to lodge with an approved tenancy deposit scheme the Applicant’s deposit in respect of the Property, as required by Regulation 3(1) of the Tenancy Deposit Scheme (Scotland) Regulations 2011, and that the Respondent should pay to the Applicant the sum of One Thousand Eight Hundred Pounds in respect of that failure.

Background

By application, received by the Tribunal on 11 June 2018, the Applicant sought an Order for payment by the Respondent to the Applicant of Two Thousand Pounds, being three times the deposit of £600 paid by the Applicant at the commencement of the tenancy of the Property, together with a further sum of £200, which had been deducted from the deposit before it was paid back to the Applicant when the tenancy ended on 29 April 2018. The Applicant contended that the Respondent had failed to lodge the deposit with any of the three approved tenancy deposit schemes within 30 days of the commencement of the tenancy.

The Parties were advised of a date set down for a Case Management Discussion and the Respondent was invited to make written representations to the Tribunal by 13 September 2018.

The Respondent did not make any written representations to the Tribunal, but, prior to the date of the Case Management Discussion, provided a copy of an e-mail she had sent to CHAI Edinburgh, who were advising the Applicant, that she would refund the Applicant the sum of One Thousand Eight Hundred Pounds to settle all issues arising from the tenancy agreement. That e-mail had been sent on 13 September 2018.

Case Management Discussion

A Case Management Discussion took place on the afternoon of 8 October 2018. Neither party was present or represented at the Case Management Discussion.

Findings in Fact

The Tribunal held that the Respondent had not lodged the deposit with any of the three approved tenancy deposit schemes. The tenancy began on 22 October 2014 and ended on 29 April 2018.

The Respondent sent a personal cheque to the Applicant, dated 21 May 2018, with a note saying "*Herewith deposit minus last week rental shortfall. Difficult & bad mark on living room carpet requiring professional cleaning. Small wear and tear items*".

Reasons for Decision

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.

Regulation 3(1) of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations"), which were in force before the tenancy of the Property commenced, states that a landlord 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 certain information required under Regulation 42 of the 2011 Regulations.

Regulation 10 of the 2011 Regulations provides that if it 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.

The Tribunal noted that the Respondent had not proffered any excuse for her failure to lodge the deposit with an approved scheme, but that she had, in her e-mail of 13 September 2018, stated her intention to pay the sum of One Thousand Eight Hundred Pounds to the Applicant.

There was no evidence before the Tribunal as to whether the sum offered by the Respondent in her e-mail of 13 September 2018 had been paid or whether her offer had been accepted by the Applicant.

The Tribunal noted the request by the Applicant to be reimbursed the sum of £200 that had been retained when the deposit was repaid, but held that the maximum award it could make under the 2011 Regulations was three times the amount of the deposit. The Tribunal could find no reason provided by the Respondent for its award

being less than the maximum permitted under Regulation 10 of the 2011 Regulations.

Decision

Having regard to all the information before it, the Tribunal decided to determine the application without a hearing, found that the Respondent had failed to comply with Regulation 3(1) of the 2011 Regulations and determined that the amount to be paid by the Respondent to the Applicant should be equal to 3 times the deposit, namely One Thousand Eight Hundred Pounds.

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.

George Clark

Legal Member/Chair

Date

8 October 2018