



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 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/18/1489

Re: Property at 60 Northcrofts Road, Biggar, ML12 6EL (“the Property”)

Parties:

Mr Dean William Gallacher, 60 Northcrofts Road, Biggar, ML12 6EL (“the Applicant”)

Mrs Mary McNee c/o Mrs Mary Calveley, 4 Sillerknowe Court, Biggar, ML12 6AR (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the Respondent to the Applicant of £600 should be made.

Background

1. By application dated 19 June 2018 the Applicant applied to the Tribunal for an order in terms of 10(a) of the 2011 Regulations. Supporting documentation, including a copy of the tenancy agreement between the parties, was lodged with the application.
2. A copy of the application and supporting documentation were served on the Respondent by Sheriff Officer on 31 August 2018 together with a letter notifying the Respondent of the date and time of the Case Management Discussion (“CMD”).
3. The case called before the Legal Member of the Tribunal for a CMD on 28 September 2018 at Fountain Hall, Abbeygreen, Lesmahagow, at 2.30 pm.

The Applicant was personally present and accompanied by Mr Andrew Carnan. He was represented by Mr Doig, solicitor. Mrs Mary Calveley attended on behalf of the Respondent accompanied by Mr Stephen Calveley. The Respondent was represented by Ms Robison, solicitor. It was also confirmed that Mrs Calveley has power of attorney for the Respondent who resides in a care home.

Case Management Discussion

4. Mr Doig made a submission on behalf of the Applicant. He advised that the Applicant is seeking the maximum award, namely three times the deposit paid. In support of this he stated that the deposit had been paid at the start of the tenancy on 8 September 2017 but had not been deposited in a tenancy deposit scheme until 11 January 2018, some 4 months after the start of the tenancy. In terms of the regulations, the deposit must be lodged in a scheme within 30 days of the start of the tenancy. Mr Doig advised that the purpose of the requirement to lodge the deposit is to protect tenants. He further advised that a number of issues had arisen in relation to the tenancy which had caused the Applicant concern. These included repairs not carried out, failure of the landlord to register with the local authority and aggressive behaviour by Mr Calveley toward him. These problems caused the Applicant to have genuine concern about the deposit he had paid and whether it was safe. Mr Doig referred the Legal Member to a number of documents, including the tenancy agreement, a document form Safe Deposits Scotland showing the date of lodging as 11 January 2018, a bank statement, landlord registration information and witness citations in relation to a criminal case against Mr Calveley. Mr Doig concluded by saying that the Respondent had flagrantly disregarded the obligation to lodge the deposit, that this was not simple oversight, and that in all the circumstances the highest penalty was appropriate.
5. Ms Robison made a submission on behalf of the Respondent. She invited the Legal Member to award the minimum penalty. In support of this she advised that Mrs Calveley had been fully aware of the requirement to lodge the deposit. However, a number of personal issues had arisen at the relevant time. Mr Calveley was hospitalised following a heart attack and the Respondent had to move care home at short notice. Both matters caused a great deal of anxiety and distress. As a result, the lodging of the deposit was overlooked. Ms Robison pointed out that the breach of the regulation in this case was a delay in lodging the deposit, rather than a complete failure to do so. The deposit is now secured and has been since January 2018. Furthermore, the Applicant has suffered no financial loss and the Respondent always had sufficient funds available to repay the deposit. Mr Calveley then addressed the Legal Member, advising that the Applicant had sought to take advantage of the failure to lodge the deposit by asking for it to be applied to his rent account, when he had failed to make a payment. The request was refused. He also referred to incidents which had occurred involving himself and the Applicant, which showed unreasonable behaviour by the Applicant in the management of the tenancy.

6. In response to questions by the Legal Member Mrs Calveley confirmed that she had signed the lease as attorney for the Respondent and had known at that point that the deposit had to be lodged. In response to the submissions made on behalf of the Respondent Mr Doig confirmed that the Applicant had asked for the deposit to be applied to the rent account and had been refused. He had made the request because he was concerned that the deposit had not been secured. Ms Robison concluded on behalf of the Respondent by asking that any award be offset against the rent arrears which are owing and claimed in a separate application before the Tribunal.

Findings in Fact

7. The parties are landlord and tenant by virtue of a tenancy agreement dated 2 September 2017
8. A deposit of £600 was paid by the Applicant at the start of the tenancy.
9. The deposit was lodged with Safe Deposits Scotland on 11 January 2018

Reasons for decision

10. The Legal member considered the application, the documentation which had been lodged and the submissions made by and on behalf of the parties.
11. The Legal member notes that there was a significant delay in the lodging of the deposit with a tenancy deposit scheme. The deposit was not lodged until 3 months after the deadline. The Applicant became aware of the position and was concerned that his deposit was not secured. The deterioration in the relationship between himself and Mr and Mrs Calveley added to his anxiety.. The Legal member also notes that Mrs Calveley was fully aware of the obligation to lodge the deposit in a scheme.
12. The Legal Member is however persuaded that there were mitigating circumstances which contributed to the delay. Furthermore, no financial loss was suffered by the Applicant. The deposit has been lodged with Safe Deposits Scotland since January 2018.
13. Regulation 3 of the 2011 Regulations states, "(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—(a) pay the deposit to the scheme administrator of an approved scheme". Although the Applicant's deposit has been lodged with an approved scheme, this was not until 4 months after the start of the tenancy. The Respondent is therefore in breach of Regulation 3. Regulation 10 states that "If satisfied that the landlord did not comply with any duty in regulation 3 the First tier Tribunal (a) must order the landlord to pay an amount not exceeding three times the amount of the tenancy deposit". The Legal Member is satisfied that in the circumstances of the case an award of £600 is appropriate and that an award in favour of the Applicant in this sum should be made.

14. Lastly, the Legal member notes that the Respondent provided no legal authority in support of the request that any sum awarded be offset against outstanding rent owed by the Applicant to the Respondent. In the absence of any such authority and, as the application for payment of outstanding rent is disputed and pending before the Tribunal the request is refused.

Decision

15. The Tribunal grants an order for payment by the Respondent to the Applicant of the sum of £600.

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.

Josephine Bonnar

 **Josephine Bonnar Legal Member**

28 September 2018