

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the Regulations”)

Chamber Ref: FTS/HPC/PR/18/1502

Re: Property at Flat 5 13 Burgh Hall Street, Glasgow, G11 5LN (“the Property”)

Parties:

Mr Robert Savage, Mrs Christina Taylor Savage, Flat 3 Brackendale Court, 116 Portsmouth Road, Camberley, GU15 1HS (“the Applicant”)

Mrs Mary Ray, 152 Beechwood Drive, Glasgow, G11 7DX (“the Respondent”)

Tribunal Members:

Steven Quither (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent is to pay to the Applicant ONE THOUSAND AND SEVENTEEN POUNDS, 60 PENCE (£1017-60).

1. BACKGROUND

This was an application arising out of the failure by the Respondent, or more properly her agents, (G & S Property Management, “G & S”) to lodge a deposit of £1275 into an approved scheme within the appropriate period of 30 days from the beginning of the tenancy. The tenancy in question commenced on 22 August 2017 and ended prematurely and at the instigation of the Applicants on 23 March 2018. Accordingly, it subsisted for 9 months in fact, although the initial term specified in the lease was 1 year.

In support of the application there was lodged and I had before me a copy of the tenancy agreement and correspondence from G & S confirming refund of part of the deposit, under deduction of what turned out to be deductions agreed to by the Applicants, as well as refund of part of a full year’s rent paid in advance.

I also had representations made by the Respondent which, in essence, indicated she had placed her trust in G & S to attend to matters such as

placing deposit moneys in an approved scheme, which they had failed to do here, due to an “administrative error”. She also made reference to G & S managing other properties on her behalf.

2. CASE MANAGEMENT DISCUSSION

Both parties were in attendance, albeit the Second Applicant was represented by the First, who produced a letter of authority on her behalf, with which I was satisfied

The First Applicant advised that after paying the deposit and a full year’s rent at the start of the tenancy due to a change of circumstances, he and his wife required to leave the tenancy early, which they duly did by agreement on 23 March 2018. As a gesture of goodwill and to facilitate a hopefully early “replacement” tenant being found, they agreed to pay a total of £495 towards remarketing etc. of the Property. During May of 2018 and after requiring to make various enquiries with G & S, they received a refund of the deposit under deduction of this amount and also £4,250 balance due of rent paid in advance.

However, while awaiting resolution of these 2 issues, he had taken advice from Shelter and reverted to them again to express his dissatisfaction with the delay in these moneys being refunded to him. He had then received further advice as to the approved scheme etc. and decided to make this application in terms of same. His dissatisfaction seemed to be all with G & S, rather than the Respondent herself.

The Respondent advised she had used G & S for a number of years now for management of her properties, since she was often abroad. As soon as she became aware of this application, which took her by surprise, to put it mildly, she reverted to G & S to confirm and clarify that there were no other similar cases as this and had received satisfactory confirmation that there weren’t. She confirmed that so far as she was concerned G & S should not have refunded in one payment the rent paid in advance but should rather have paid it back to the Applicants in instalments, as monthly rental payments from the “new” tenants were received, which is not a matter with which this tribunal was concerned.

I outlined to the parties, in case they were not fully aware of same, the provisions of Regulations 9 and 10 and the discretion available to make an award of up to 3 times the deposit. At that time I also indicated that it was not my intention to make an award at this maximum level but that I would be making an award, in view of the very clear acceptance of the omission, in some amount and that I would be considering, in assisting me doing so, the decision and reasoning of Sheriff Welsh in the reported case of :--

RUSSEL-SMITH and Ors v UCHEGBU [2016] SC EDIN 64.

I then afforded the parties time for a short break while I considered what award to make.

3. FINDINGS IN FACT

That the parties entered into a tenancy on 22 August 2017, which ended prematurely and at the instigation of the Applicants on 23 March 2018. The Respondent’s agents, (G & S Property Management, “G & S”) failed to lodge

a deposit of £1275 into an approved scheme within the appropriate period of 30 working days from the beginning of the tenancy.

The Respondent relied upon G & S to attend to matters such as placing deposit moneys in an approved scheme, which they had failed to do here, due to an "administrative error". G & S also managed other properties on her behalf.

4. REASONS FOR DECISION

In considering what award to make, I considered particularly Sheriff Welsh's comments in Paragraph 7 of his judgement, in which he stated it was the duty of the court to "impose a fair, proportionate and just sanction" and also at Paragraph 8, when he stated "Every case will depend on its own specific facts and...exercise of a judicial discretion is a balancing exercise."

I considered also the formula used by him in Paragraph 9 to arrive at a figure, in which he considered the length of time during the lease when the deposit was "unprotected and the tenants deprived of protection from the scheme....".

By applying this formula, if I understood it correctly, I considered that the lease here lasted from 22 August 2017 to 23 March 2018 ie 213 days. By deducting the "30 working days" referred to in Regulation 9 afforded to the landlord to lodge the deposit with an approved scheme, I arrived at a total of 170 days during which the deposit was unprotected. Thereafter, by dividing the deposit by 213 and then multiplying it by 170 I sought to arrive at the appropriate figure, to reflect the "loss of protection" part of the Applicants' claim.

Unfortunately and somewhat embarrassingly, I then calculated it against a deposit of £1750 but then was able to recalculate it against the correct deposit figure of £1275, after my error was pointed out by the Respondent, for which I am grateful and arrived at a figure of £1017-60.

Upon confirming this award, I was asked by the First Applicant to consider that the deposit had remained at risk till when it was actually returned ie some 2 months or so later but felt my award should be based on and restricted to and by when the tenancy ended, so I declined to reconsider and recalculate same.

Under further reference to the logic employed by Sheriff Welsh, I considered whether any further payment was appropriate here. I noted, as did he, that the deposit under deduction of an agreed amount, had now been repaid, albeit not till about the middle of May but unlike that case I did not consider there to be any fault on the part of the Respondent, who had placed her trust fully in G & S and who had also very candidly conceded their omission in her representations, which allowed the whole matter to be finalised at today's CMD. In these circumstances, I felt able to make no "weighting" such as was made in the reported case.

5. DECISION

To award the Applicants ONE THOUSAND AND SEVENTEEN POUNDS, 60 PENCE (£1017-60)

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.

Steven Quither

Legal Member/Chair

8 OCTOBER 2018

Date

*Insert or Delete as required