



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 Regulation 3(1) of the Tenancy Deposit Scheme (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/18/2162

Re: Property at Flat 0/2, 32 Robertson Street, Greenock, PA16 8HQ (“the Property”)

Parties:

Miss Jacqueline Hughes, Mr Lars Alexander Virstrom, 1/1, 36 Robertson Street, Greenock, PA16 8HQ (“the Applicants”)

Ms Pamela McCrae, 12 Margaret Street, Greenock, PA16 8AS (“the Respondent”)

Tribunal Member:

David Preston (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined, without a full 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 Four Hundred and Fifty Pounds in respect of that failure.

Background

1. By application dated 15 and received by the Tribunal on 17 August 2018, the Applicants sought an Order for a payment by the Respondent to the Applicant in respect of her failure to lodge the deposit of £450 paid by the Applicants at the commencement of her tenancy of the Property with any of the three approved tenancy deposit schemes within 30 days of the commencement of the tenancy.

2. The Parties were advised of a date set down for a Case Management Discussion (CMD) and the Respondent was invited to make written representations to the Tribunal by 16 October 2018.
3. The Respondent did not make any written representations to the Tribunal, but requested the postponement of the Case Management Discussion from the scheduled date of 23 October 2018, as she was unable to arrange childcare in view of industrial action being taken in Glasgow on that date. She did state that she would be willing to participate in a teleconference.
4. Rather than delay matters, the tribunal decided that the CMD should proceed by way of teleconference at the scheduled time.

Case Management Discussion

5. A CMD took place on the afternoon of 23 October 2018. Both parties were present at the CMD by teleconference.
6. At the outset the tribunal confirmed with the respondent that she had received all the documentation lodged by the applicants.
7. The respondent confirmed that the deposit had not been placed on an approved tenancy deposit scheme. She said that at the time of the commencement of the lease she had been under considerable pressure as she had been moving house and was caring for her young twins. She said that she had received a cheque for the deposit and had paid it into her bank. When the funds had cleared into her account she had overlooked paying it to a scheme. She accepted full responsibility for the oversight.
8. The respondent said that when the tenancy came to an end she realised that the deposit had not been paid in to a scheme. She repaid the deposit in full to the applicants notwithstanding that she claimed that she had been required to carry out work to the property after it had been vacated. She was of the view that some of the deposit would have been repaid to her to offset such costs in the event that the adjudication scheme had been available.
9. The applicants said that they had not been aware of the situation but said that they too had been under stress as a result of their move to the property, but had made sure that they fulfilled their obligations under the lease agreement. They denied that the property had been left in a bad condition and complained that there had been mould in the bathroom throughout their tenancy and nothing had been done to rectify it despite requests having been made.

Findings in Fact

10. The tribunal determined that the respondent had not lodged the deposit with any of the 3 approved tenancy deposit schemes.

Reasons for Decision

11. 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.
12. 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.
13. 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.
14. The Tribunal noted that the Respondent had stated had been aware of the requirement to lodge deposits, and her failure was as a result of an oversight.
15. The Tribunal was of the view that the deposit was unprotected in terms of the Regulations for the duration of the tenancy.
16. The tribunal was mindful that there was nothing to suggest that the respondent's failure had been wilful, or that she had systematically been in default in respect of a number of properties. The tenancy has now ended and the deposit was returned to the applicants in full at the end of the tenancy.
17. In the whole circumstances presented to the tribunal, it considered that while any default of this sort is a serious matter, this failure was not at the most serious end of the scale which would attract the maximum sanction of 3 times the deposit. It also had regard to the mitigating factors put forward by the respondent and considers that the fair, proportionate and just sanction in this case is the equivalent to the amount of the deposit.

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.

David Preston

Legal Member

Date

23/09/18