

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
Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/19/2334

Re: Property at 2/2, 48 Pleasance St, Glasgow, G43 1SW (“the Property”)

Parties:

Miss Emma Osborne, Mr David Mulholland, 2/1, 48 Pleasance St, Glasgow, G43 1SW (“the Applicants”)

Shirvani Khanna, c/o Millards Property, Great Michael House, 17 Links Place, Edinburgh, EH6 7EZ (“the Respondent”)

Tribunal Members:

John McHugh (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent had failed to place the deposit in an approved scheme and that the Respondent should pay to the Applicants the sum of £75.

Background

The Applicants are the tenants and the Respondent the landlord in respect of a short assured tenancy of the Property dated 19 and 23 March 2018.

The Case Management Discussion

A Case Management Discussion (“CMD”) took place at the Glasgow Tribunals Centre on 25 October 2019. David Mulholland was present. Amir Fard of Millards Property represented the Respondent.

Findings in Fact

The lease of the Property began on 30 November 2017 at which time the applicant paid to the Respondent a deposit of £750.

A formal tenancy agreement was not signed until 19 and 23 March 2019.

The deposit was placed into an approved scheme on 19 April 2018.

The lease came to an end on 30 June 2019.

Reasons for Decision

Mr Fard explained that his property management business had in late 2017 consisted of two people, of which he was one. The other individual had been responsible for the management of the Property. She had been diagnosed with cancer. It became apparent after a period of time that that individual had become unable to discharge her duties properly and an audit in April 2018 revealed that one oversight caused by the individual's reduced level of performance had been that the Applicants' deposit had not been placed in an approved scheme. This had been remedied once the problem had been remedied. Mr Fard acknowledged the mistake and was apologetic.

Mr Mulholland entirely accepts the explanation and that there was no element of bad faith.

The breach in this instance appears to the Tribunal to be at the less serious end of cases of this kind. The deposit was eventually placed in an approved scheme without any third party having to raise the matter and no one has lost out. The circumstances of the illness evidently created a difficult situation and provide a background explanation for the Respondent's breach of duty. On the other hand, the Tribunal considers that some recognition is appropriate of the following factors: (1) that the deposit was at risk during the period of December 2017 to April 2018 and (2) that the Respondent's agent should have had systems in place to deal with the difficulty caused by the illness of one of the staff.

In the circumstances, the Tribunal considers that a finding that the Respondent should pay the sum of £75 is appropriate.

Decision

The Respondent should pay to the Applicants the sum of £75.

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.

J McHugh

Legal Member/Chair

25 JUL 2019

Date