



**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 (Regulations)**

Chamber Ref: FTS/HPC/PR/19/2751

Re: Property at 4 Dormanside Court, Glasgow, G53 5YX (“the Property”)

Parties:

Mr Matthew Russell, 82 C Main Street, Barrhead, G78 1SE (“the Applicant”)

Mrs Kelly Linn , 5 Willowford Place, Glasgow, G53 7ZU (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the sum of £400 to the Applicant.

Background

This is an application under Regulation 9 of the Regulations and Rule 103 of the Tribunal Procedure Rules in respect of an alleged failure to protect a tenancy deposit.

The Tribunal had regard to the following documents:

1. Application received 4 September 2019;
2. Copy texts between Parties;
3. Respondent’s Written Submissions dated 3 October 2019;
4. Applicant’s email of 28 October 2019.

Case Management Discussion (CMD)

The Applicant did not appear and was not represented. He had emailed at 9.10pm the day before the CMD informing the Tribunal that he could not attend due to unforeseen work circumstances. He sought a postponement.

The Respondent attended along with her husband. She was not represented. She opposed the application for postponement on the basis that the facts were admitted and the Tribunal ought to have sufficient information upon which to reach a Decision.

The Tribunal considered the documentary evidence and was satisfied that it could make a Decision and the procedure had been fair. The Applicant had not given adequate explanation for his non attendance or to justify a postponement. The Tribunal administration had attempted to contact the Applicant by telephone and email for further information as to why he sought a postponements and to offer his participation by telephone. The Tribunal Administration had not received any response.

The Tribunal considered the application and decided to refuse the postponement on the basis that there was no satisfactory explanation and the Tribunal had sufficient information to determine the application on its merits without any further evidence from the Applicant. The Tribunal was satisfied that the procedure was fair and in accordance with the overriding objective.

The Tribunal made the following findings in fact:

1. The Parties entered in to an assured tenancy commencing 23 June 2016;
2. The Monthly Rent was £400;
3. The Applicant paid a Deposit of £400;
4. The Deposit was placed with Safe Deposit Scotland on 25 June 2019;
5. The Respondent was an inexperienced landlord and had only let this Property since December 2013;
6. No previous tenants had paid deposits;
7. The Respondent was unaware of the requirement to protect deposits until June 2019;
8. The Applicant had suffered no prejudice as the Deposit had been ultimately protected by Safe Deposit Scotland.

Having made the findings in fact the Tribunal then considered the requirements of the Regulations. In this regard it was clear that the Respondent had failed to protect the Deposit until 25 June 2019 and had accordingly failed to comply with the Regulations.

The Tribunal had regard to the case of ***Russell-Smith and Others v Uchegbu [2016] SC EDIN 64***. The Tribunal had to consider what was a fair, proportionate and just sanction in the circumstances of the case having regard to the purpose of the Regulations and the gravity of the breach. Each case will depend on its own facts

and in the end of the day the exercise by the Tribunal of its judicial discretion is a balancing exercise.

The Tribunal weighed the factors and found it to be of significance that the Deposit had been unprotected for 3 years; the Respondent was an inexperienced landlord; the Respondent was unaware of the Regulations and acted immediately that the requirement was brought to her attention; the Applicant had not been prejudiced as the Deposit had been protected in full prior to the expiry of the tenancy.

The Tribunal found the Respondent's breach to be at the lower end of the scale and ordered the sum of £400 to be paid as a fair, proportionate and just sanction.

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.

Alan Strain

Legal Member/Chair

29 October 2019

Date