



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/18/0893

Re: Property at 49 White Hurst, Bearsden, G61 4PG (“the Property”)

Parties:

Mrs Leesa Da Silva, 2 Louden Terrace, Bearsden, G61 4QP (“the Applicant”)

Miss Deliwe Kambwanji, 11 Tintagel Close, Basingstoke, Hampshire, RG23 8JE (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order in favour of the Applicant against the Respondent for payment in the sum of ONE THOUSAND EIGHT HUNDRED POUNDS (£1,800) STERLING should be made.

Background

1. By Application submitted on 16 April 2018, the Applicant applied to the Tribunal for an order for payment against the Respondent in terms of Regulation 103 of the 2017 Regulations in respect of the Respondent not having paid the tenancy deposit into an approved scheme in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (the Tenancy Deposit Scheme Regulations). Supporting documentation was also submitted in respect of the Application, including copies of:- the tenancy agreement, receipts for deposit paid to the Respondent’s agent, Tenancy Information Pack, form relating to Tenancy Deposits, message from Applicant regarding termination of tenancy and details from Applicant concerning the lodging of the deposit in a tenancy deposit scheme.

2. On 8 June 2018, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Regulation 9 of the 2017 Regulations.
3. On 4 July 2018, a copy of the Application and supporting documentation was served on the Respondent by Process Server, together with notification of the Case Management Discussion scheduled to take place on 27 August 2018. Written representations were to be lodged by the Respondent by 21 July 2018. A written letter of representations dated 15 July 2018 was submitted by the Respondent on 17 July 2018 and circulated to the Applicant.
4. The Case Management Discussion took place before the Legal Member on 27 August 2018 at 2pm in Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT. The Applicant was present, together with her husband, Mr Gary Da Silva, who had been the joint tenant in respect of the property. They were represented by Mr Raymond Heath of CAB. The Respondent was also present and accompanied by a supporter, Mr Kuziwa Madziwa.

Case Management Discussion

5. Mr Heath initially addressed the Application, advising that the Applicant had paid the £900 tenancy deposit to the Respondent's letting agent, Clyde Property, at the outset of the tenancy which lasted 37 months. For that whole period the deposit had not been placed in a scheme and was only placed in a scheme by the Respondent two days after the tenancy ended. This was a breach of the Tenancy Deposit Scheme Regulations which required the Respondent to have paid the deposit into an approved scheme within 30 working days of the start of the tenancy and also breached the terms of the tenancy. The applicant was never advised where the deposit had been placed. The applicant referred to the receipts lodged with the Application showing the sums of money paid to the letting agent at the outset, which included the deposit. The letting agent said that they would pay the deposit to the Respondent who had been advised to pay the deposit into the LPS tenancy deposit scheme. The Applicant was issued with the form (lodged with the Application) which indicated the deposit was being paid into that scheme, so she and her husband had presumed throughout the tenancy that the deposit was there. Towards the end of the tenancy, matters were in dispute concerning repairs/damage and return of the deposit. They asked a few times about where the deposit was being held but never got a clear answer. They found out after the tenancy ended on 2 April 2018 that the Respondent had only paid the deposit into the Deposit Scotland scheme on 4 April 2018.
6. The Respondent confirmed what she had stated in her written representations submitted to the Tribunal and that she had not protected the deposit by paying it into a scheme. She confirmed that her letting agent had sent her the £900 deposit at the commencement of the tenancy and that they had advised her to pay it into a scheme. She stated that she initially forgot to do so and as time went on she just forgot all about it. The Respondent denied that the Applicant

kept asking her about the deposit or that her letting agent contacted her again about the deposit. She explained that she had stopped using the letting agent to manage the property once the tenancy was underway. The Respondent stated that she only heard about the deposit again at the end of the tenancy. She agreed that she had only paid the deposit into the Deposit Scotland scheme on 4 April 2018. She confirmed that there was a dispute about return of the deposit to the Applicant and that the scheme negotiated the outcome of that which was that the Respondent got to retain the deposit.

7. The Legal Member questioned the Applicant about her assertion that they had asked the Respondent several times about the tenancy deposit, which the Respondent had denied. It was then clarified that their queries about the whereabouts of the tenancy deposit were made to the Respondent's letting agent at the start of the tenancy and only to the Respondent herself towards the end of the tenancy.
8. The Legal Member indicated that the case could be continued to a Hearing if any relevant matters were in dispute between the parties or if either party had any witnesses or additional documents they wished to lodge in support of their case. The Legal Member explained the requirements to be satisfied for the Tribunal to make an order against the Respondent and decide on the appropriate sanction to be applied in terms of the Tenancy Deposit Scheme Regulations. The Legal Member indicated that, although there is clearly still disagreement between the parties concerning repair and other matters arising from the ending of the tenancy, there appeared to be agreement on all of the relevant facts concerning the breach of the Tenancy Deposit Scheme Regulations in order to allow this Application to be determined at the Case Management Discussion, rather than continuing the matter to a Hearing. Neither party took issue with this and the Legal Member considered this not to be contrary to the interests of the parties.
9. The Legal Member then invited comments from the parties on the appropriate sanction to be applied, given the Respondent's admitted breach of the Tenancy Deposit Scheme Regulations. Mr Heath stated that the Applicant was looking for the maximum sanction of three times the deposit given that the deposit was not protected in a scheme for the whole of the 37 months of the tenancy, that the Respondent admitted she had been directly advised by her letting agent to place the deposit in a scheme and that the tenancy agreement and other documentation issued to the Applicant stated that the deposit would be placed in a scheme. The Respondent said that she did not see why the maximum should be imposed. She has accepted that she was in breach of the regulations and that she had not meant to disrespect the law. She had paid the deposit into a scheme when she realised her oversight. The Respondent stated that the Applicant had not been prejudiced in any way as the deposit was always available. She advised that she lives in England and that this was the only property that she lets out. She is not a tycoon. She said that she had already incurred a lot of expense because of the Applicant's breach of tenancy and in respect of repairs.

Findings in Fact

10. The Applicant and her husband leased the property at 49 White Hurst, Bearsden, G61 4PG from the Respondent by virtue of a Short Assured Tenancy.
11. The tenancy commenced on 2 March 2015 and ended on 2 April 2018.
12. At the commencement of the tenancy, the Applicant paid a deposit of £900 in terms of the lease. The sum was paid to the Respondent's letting agent who, in turn, paid it to the Respondent. The letting agent advised the respondent to pay the deposit into an approved Tenancy Deposit Scheme.
13. The Applicant was issued with a receipt for the deposit and a form indicating that the deposit would be paid into the LPS Scotland tenancy scheme. Clause 5 of the Lease also stated that the deposit would be paid into an approved scheme.
14. The Respondent failed to lodge the tenancy deposit in an approved scheme for the whole duration of the tenancy which was a period of 37 months.
15. The Respondent paid the tenancy into the Deposits Scotland scheme on 4 April 2018, two days after the tenancy had ended, in response to enquiries from the Applicant about the whereabouts of the deposit.
16. There was a dispute between the parties about return of the deposit concerning property repairs, etc. The outcome of this was settled through the scheme's mechanism for such disputes in favour of the Respondent who was found entitled to return of the deposit.
17. The Applicant submitted this Application to the Tribunal timeously in terms of the Tenancy Deposit Scheme Regulations on 16 April 2018.

Reasons for decision

18. The Application was in order and had been timeously submitted to the Tribunal in terms of Regulation 9 of the Tenancy Deposit Scheme Regulations. The Tribunal was satisfied from the documentation before it and from the oral representations made at the Case Management Discussions that the Respondent was under the duty outlined in Regulation 3 of the said Regulations to pay the tenancy deposit of £900 into an approved tenancy deposit scheme within 30 working days of the beginning of the tenancy and that she had not complied with that duty. The Respondent admitted this breach both in her written representations submitted to the Tribunal and in her oral submissions made at the Case Management Discussion. The Tribunal was therefore satisfied that, in terms of Regulation 10 of the Regulations, a sanction must be imposed on the Respondent in respect of the breach.

19. In determining the appropriate amount of the sanction to be imposed on the Respondent for payment to the Applicant, the Tribunal considered the submissions that both parties had made in this regard and the various factors in this case. The main facts were not disputed in that the Respondent admitted that she had not paid the deposit into a scheme until 2 days after the tenancy had ended and the deposit had therefore not been protected for the whole duration of the tenancy, some 37 months. The Tribunal considered that this lengthy time period; the fact that the Applicant had been led to believe that the deposit had been placed in a named scheme when it had not; that the Respondent had (by her own admission) been advised by her letting agent to pay the deposit into an approved scheme but failed to do so; and the fact that the Respondent had instead had the benefit of the £900 deposit for over 3 years, justified a sanction towards the higher end of the scale. However, the Tribunal did not consider that the maximum sanction of three times the amount of the deposit being sought by the Applicant was appropriate in the circumstances of this case. The Respondent had been quite candid in admitting her breach and the Tribunal was persuaded that this had been due to an oversight as opposed to a flagrant disregard of the Regulations. This is the Respondent's only rental property. In addition, the Respondent had paid the deposit into an approved scheme, albeit after the tenancy had ended, so the free dispute resolution process provided by the scheme was available to the Applicant in seeking return of the deposit. The Tribunal did not take into account the details of the dispute between the parties concerning the ending of the tenancy and return of the deposit, nor the outcome of the scheme dispute resolution process as these were not considered relevant to the issues of establishing if there had been a breach of the Regulations and, if so, the appropriate sanction to be applied in respect of that breach. In all of the circumstances, the Tribunal determined that the appropriate amount of the sanction to be applied was double the amount of tenancy deposit, namely the sum of £1,800.

Decision

20. The Tribunal accordingly determines that an order for payment by the Respondent of the sum of £1,800 should be made in favour of the Applicant.

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.

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Nicola Weir, Legal Member

Date

27 August 2018