

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 (Regulations)

Chamber Ref: FTS/HPC/PR/19/0033

Re: Property at Flat 9, 11 Hillside Street, Edinburgh, EH7 5HD (“the Property”)

Parties:

Miss Jutta Molsa, Flat 5, 24B Allanfield, Edinburgh, EH7 5FT (“the Applicant”)

Miss Yejide Oyeyemi Onabule, Flat 3 Wheatcroft Court, 14 Wenlock Gardens, London, NN4 4XJ (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent had breached the Regulations and awarded the sum of £575 to the Applicant.

Background

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

The Tribunal had regard to the following documents:

1. Application dated 7 January 2019;
2. Tenancy Agreement commencing 6 November 2017;
3. Safe Deposit Scotland Certificate dated 15 May 2018.

Case Management Discussion (CMD)

A Strain

The case called for a CMD at which both Parties participated by telephone. After hearing both Parties the Tribunal was satisfied that it had sufficient information to enable it to make a decision and it was fair to do so.

In particular the Tribunal made the following findings in fact:

1. The Parties entered a Tenancy Agreement which commenced on 6 November 2017 and ended 8 December 2018;
2. A deposit of £575 was paid by the Applicant to the Respondent at the commencement of the tenancy;
3. The Deposit was not protected until 15 May 2018;
4. The Respondent was unaware of the legal requirement to protect the deposit and took action to do so immediately it was brought to her attention;
5. The Respondent lets other Properties in Scotland which have been let subsequent to this Property and she has protected the deposit for them;
6. The Respondent has only let this Property since 2016.

The Tribunal then considered what award to make in respect of the agreed breach of the Regulations. The Tribunal had regard to ***Russell-Smith and Others v Uchegbu [2016] SC EDIN 64***. In particular the Tribunal considered what was a fair, proportionate and just sanction in the case, having regard to the purpose of the Regulations and the gravity of the breach. Each case will depend upon its own facts and in the end of the day the exercise of judicial discretion is a balancing exercise.

The Tribunal weighed all the factors and found it to be of significance that the deposit had been unprotected for in excess of 6 months; the Respondent was an inexperienced landlord and unaware of the requirement to protect the deposit; the Respondent had acted as soon as it was brought to her attention; there had been no prejudice to the Applicant.

The Tribunal accordingly found the breach to be at the lower end of the scale and ordered the sum of £575 to be paid to 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.

A Strain

Legal Member/Chair

Date

23 April 2019