



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 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/19/0057

Re: Property at 1 Parliament Street, Edinburgh, EH6 6EB (“the Property”)

Parties:

Mrs Diana Ilievici or Karlins, Flat 11, 24B Allanfield, Edinburgh, EH7 5FT (“the Applicant”)

Mr Tarjinder Hundal Singh, ADDRESS UNKNOWN (“the Respondent”)

Tribunal Member:

Maurice O’Carroll (Legal Member)

Decision (in the absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent had not placed the tenancy deposit into an approved scheme as required by the 2011 Regulations

Background

1. An application was made by the Applicant to the Tribunal under rule 103 of the First-tier Tribunal for Scotland (Housing and Property Chamber)(Procedure) Regulations 2017 on 8 January 2019 seeking an Order for payment of a deposit in relation to a private tenancy for the Property
2. The tenancy commenced on 28 February 2018 and ended on 3 December 2018 with the requisite notice having been provided to the Respondent.
3. The application was made using the Applicant’s maiden name. She has since February 2019 started using her married name of Karlins. This will be reflected in the Order to follow. The Respondent provided an address at 8 Hawthornvale Edinburgh on the lease agreement between the parties. Although the Applicant was able to communicate with him by means of text message, formal service at that address was not possible. On the Council’s landlord register, the Respondent’s address is given as 8/7 Durar Drive, Edinburgh, EH4 7HN, but apparently, it has not been possible to serve the Respondent personally at that

address either. Accordingly, Service by Advertisement required to be made on the Respondent in this case. The Tribunal was provided with a Certificate of Service by Advertisement dated 13 June 2019, certifying that such service had been duly made and that the Respondent had been informed by that means of the hearing due to take place on 13 June 2019.

4. The Applicant attended a Case Management Discussion ("CMD") at George House, George Street, Edinburgh at 10.00am, all as specified in the Service by Advertisement. The Respondent did not appear, nor anyone on his behalf. In the circumstances, the Tribunal proceeded in his absence.

The hearing

5. At the CMD, the Applicant confirmed the details contained within her application form, the details of her married name and the efforts she had made to contact the Respondent by post.

Findings in fact

6. The parties entered into tenancy agreement on 23 February 2018. On that date, the Applicant paid the Respondent, the sum of £695 by way of deposit.
7. The rental agreement specified the duration of the lease being 28 February 2018 to 27 August 2018 continuing monthly thereafter. The rent payable was £695 per calendar month.
8. The lease was validly terminated by notice by the Applicant on 3 December 2018.
9. The deposit was not returned to the Applicant immediately. On 24 January 2018, the Applicant made enquiries as to how her deposit could be returned to her. She contacted Letting Protection Scotland who advised her that it had no record of a deposit being protected by it in respect of the rental agreement at the Property.
10. The Applicant made further enquiries of the other Government authorised tenancy deposit protection schemes, each with a negative result. The responses from those authorised bodies were provided to the Tribunal.
11. The Tribunal accordingly finds that the Respondent did not place the Applicant's tenancy deposit with an authorised protection scheme as required by Regulation 3 of the 2011 Regulations.
12. After a certain amount of pursuing of the Respondent, the Applicant was repaid the sum of £533 from her deposit, being the full amount of £695 less rent for the period 28 November 2018 to 3 December 2018, which rent was admittedly due.
13. Given the failure to comply with the requirements of Regulation 3, the Tribunal has the powers as set out in Regulation 10 of the 2011 Regulations. That Regulation provides that where a landlord does not comply with 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.

Decision

14. The Decision of the Tribunal is therefore to make an Order for payment to the Applicant by the Respondent the sum of £2,085 being the amount which is three times the deposit paid.

Reasons for the decision

15. The Respondent has not engaged with the procedure before the Tribunal further to the Application. The Tribunal was therefore required to proceed on the basis of the papers submitted to it and the testimony of the Applicant at the CMD.

16. The Tribunal found the Applicant to be a wholly credible and reliable witness. On the basis of the papers submitted, it is clear that the Respondent did not comply with Regulation 3 of the 2011 Regulations.

17. The terms of Regulation 3 are mandatory. Tenants' deposits must be protected. Failure to do so risks the penalty in terms of Regulation 10 being applied. As the Respondent did not engage with the Tribunal process, no excuse for that failure or any other circumstances in mitigation have been provided to the Tribunal. Accordingly, in the exercise of its discretion, the Tribunal decided to make an Order for the full penalty available to it in terms of Regulation 10.

18. During the CMD, there was discussion regarding a potential discount for the additional days of rent for the period from 28 November to 3 December 2018.

19. Having considered the matter, the Tribunal is of the view that a deduction has already been made by the Respondent in respect of that sum admittedly due. To deduct it again from the present Order would constitute double counting. Therefore for the reasons stated above the full amount of three times the deposit sum paid is the appropriate sum to be included within the Order.

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.

Mr Maurice O'Carroll

Legal Member/Chair

13 June 2019

Date