



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section Regulations 9 & 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Chamber Ref: FTS/HPC/PR/20/1409

Re: Property at 1/1 54 Garnethill Street, Glasgow, G3 6QQ (“the Property”)

Parties:

Miss Nicola Elliot, Miss Megan Munro, Ms Kirsty Eisner, 7 Croy Road, Tornagrain, Inverness, IV2 8AF; 20 Oakdene Court, Culloden, Inverness, IV2 7XL; 14 Underwood Place, Balloch, Inverness, IV2 7RF (“the Applicants”)

Mr Kash Bhatti, 59 Newton Grove, Newton Mearns, Glasgow, G77 5QJ (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member)

1. This Hearing was a Case Management Discussion (hereinafter referred to as a “CMD”) fixed in terms of Rule 17 of the Procedure Rules and concerned an Application under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (hereinafter referred to as “the Deposit Regulations”). The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained and it was understood a final decision could be made. The hearing took place by teleconference due to the covid-19 pandemic.

2. Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £2700 in terms of Regulation 10(a) of the Regulations should be made.

3. Attendance and Representation

The Applicants were present and unrepresented.

The Respondent was present and unrepresented.

4. Preliminary Matters

There were no preliminary matters raised. It was noted that the Respondent had lodged written representations in the case and the Applicants had had sight of them.

5. The Case Management Discussion

- The Applicants set out their position for the purpose of the CMD summarised as follows;
 - The initial deposit was £1800 which they made on 31st July 2019 prior to the Tenancy commencing on 1st August 2019. in a bank transfer of £891.
 - The Applicant's position further was that the requirement to lodge the deposit with an approved scheme within 30 days was not undertaken by the Respondent. The Applicant's said the deposit was not lodged with a Deposit Scheme until 23rd March 2020 and submitted this meant their deposit was unprotected for 235 days.
 - The Applicant said further it was their position that the Respondent in his representations made clear he had owed the property for a few years and would have been expected to know the rules.
 - The Applicants said they had handed the money over in good faith expecting it to be protected and whilst they understand the personal difficulties of the Respondent in regards family loss they did not feel this justified being unable to protect the deposit.
 - The Applicants as such sought an award given the failure.
- The Respondent set out his position for the purpose of the CMD summarised as follows but contained in detail in terms of his written representations lodged;
 - The Respondent commenced his submission by reference to the written representations he had lodged. He said he agreed the deposit was not lodged in terms of the Regulations within 30 days.
 - He said as soon as he became aware of the error he lodged it with a safe deposit scheme. He did this on 23rd March 2020 and he agreed with the Applicants on this.
 - He said he felt that the Applicant's received the benefit of the deposit scheme on the basis that parties used the arbitration scheme for matters at the end of tenancy.
 - He said further that he has since re let the tenancy and complied fully with the Regulations and considered this case occurred due to an error.
 - The Respondent said he accepted he did not lodge the deposit with an approved scheme.

Agreed Facts

- Both parties agreed the Tenancy commenced on 1st August 2019.

- Both parties agreed the Tenancy Agreement referred to a deposit of £1800 to be paid for the property and which was paid on 31st July 2019..
- Both parties agreed the Respondent did not register the tenancy deposit in connection with the property within 30 days of commencement of the Tenancy.

6. Reasons for Decision

1. Rule 17 of the Procedure Rules provides that a Tribunal can do anything at a CMD which it may do at a Hearing, including making a decision. The Legal Member was satisfied that the Tribunal had everything before it that it would require in order to make a decision having regard to the Overriding Objective. The sufficiency of facts agreed by parties allowed a decision to be made. No further evidence not already before the Tribunal was referred to by parties.
2. The Application was brought timeously in terms of regulations 9(2) of the Deposit Regulations.
3. The Tenancy Agreement contains a clause at 11 explaining a deposit was paid of £1800 for the property. The Applicants paid this amount before the commencement of the tenancy in August 2020 and all parties accepted and agreed this.
4. In terms of Deposit Regulation 10 if the FTT is satisfied that the landlord did not comply with any duty detailed in Regulation 3 then the FTT must order a landlord to pay the tenant or tenants an amount not exceeding three times the amount of the tenancy deposit.
5. The FTT was satisfied that the Respondent did not register the deposit with a deposit protection scheme as required by Regulation 3. This was accepted by all parties.
6. The FTT was also satisfied that a deposit of £1800 had been paid by the Applicants to the Respondent. Again this was a matter of agreement.
7. If the FTT was satisfied a breach of the regulations had occurred the FTT had to make an order in terms of Regulation 10.
8. In terms of Regulation 10 the FTT is obliged to make an order up to 3 times the deposit of the applicants to the respondent.
9. When considering the Order and level of sanction the FTT must have regard to the severity of the breach and any mitigating factors.
10. The deposit was unsecured throughout the tenancy until towards the end of same when the Respondent realised the error. The period of unsecurity was almost the duration of the tenancy. However given the prompt action of the Respondent upon realising the error at the end of the Tenancy he lodged the deposit on 23rd March 2020. This meant the Applicants although they did not

have the security or protection for the duration had the benefit of arbitration on return of the deposit. The Tenancy was short and the Applicants had the benefit of a scheme on seeking return of the deposit. That being said the deposit was substantial, was unprotected for almost the duration and the Respondent had failed in terms of the Regulations.

11. In the case of *Jenson v Fappiano* 2015 G.W.D 4-89 in relation to the amount of such an Award under regulation 10 of the Regulations it was noted that a judicial analysis of the nature of the non-compliance was required and a value attached to reflect a sanction which was fair and proportionate and just given the circumstances.
12. It was further noted that the Sheriff said in said case that the value was not the starting point of three times the deposit minus the mitigating factors it was what was fair and proportionate in the exercise of balanced judicial discretion.
13. The Court of Session in *Tenzin v Russell* 2015 Hous. L.R 11 held that any payment in terms of Regulation 10 of the Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.
14. The FTT was therefore of the view that an Award should be made in the lower end of the scale as the deposit had been unsecured throughout the tenancy, but the tenancy was relatively short and the Applicants had received the benefit of the arbitration scheme at the end. The Respondent had referred to difficult circumstances in his written representations to which the Tribunal took note. There had also been inconvenience and prejudice to the Applicants and the sum unprotected was substantial. Accordingly in balancing the circumstances it found the Applicants entitled to an award of 1.5 times the deposit to the sum of £2700.

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.

Karen Kirk

15th September 2020

Legal Member/Chair

Date