



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

Chamber Ref: FTS/HPC/PR/22/4300

Re: Property at 3/15 Kingsknowe Place, Edinburgh, EH14 2EG (“the Property”)

Parties:

Mr Ahmad Kalaji, G33, Robin Smith Halls, Heriot Watt University (“the Applicant”)

Mr Chris Jackson, Mr Ross Hanton, 23 Kidlaw Close, Edinburgh, EH16 6FT; 2 Skerryvore Loan, Edinburgh, EH10 6TX (“the Respondents”)

Tribunal Members:

Richard Mill (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order be made against the respondents in the sum of one thousand pounds (£1,000)

Introduction

1. This is an application under Rule 103 and Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
2. Service of the application and intimation of the Case Management Discussion (CMD) was lawfully effected upon the respondents by Sheriff Officers on 16 February 2023.

3. The CMD took place by teleconference on 21 March 2023 at 2.00 pm. The applicant represented his own interests. Neither respondent engaged in the hearing.

Findings and Reasons

4. The property is 3/15 Kingsknowe Place, Edinburgh EH14 2EG. The applicant is Mr Ahmed Kalaji who is the former tenant. The respondents are Mr Chris Jackson and Mr Ross Hanton who are the former landlords.
5. The parties entered into a private residential tenancy in respect of the property which commenced on 1 December 2021. The rent stipulated was £660 per calendar month. The applicant paid £500 by way of deposit.
6. The tenancy ended on 11 October 2022. The applicant has not received return of his deposit. He has requested this. No formal communications have been received from the respondents. No adequate reasons have been provided for the failure to return the deposit paid.
7. The applicant must satisfy the tribunal by the production of sufficient documentary evidence that the deposit is not held by any one of the three Tenancy Deposit Schemes operating in Scotland which are SafeDeposits Scotland, Mydeposits Scotland or Letting Protection Service Scotland. The applicant relies upon and has produced written e mail confirmation from each scheme which confirms that the deposit was not paid to them. The tribunal relied upon this credible and reliable documentary evidence.
8. The tribunal was satisfied that the landlords have not complied with the requirements of the 2011 Regulations and in particular did not lodge the deposit paid into an approved scheme. The duties of landlords are contained within Regulation 3. This requires a landlord who has received the tenancy deposit in connection with the relevant tenancy to pay the deposit to a relevant scheme administrator of an approved scheme within 30 working days of the beginning of the tenancy. The respondents failed to do this. The deposit paid was unprotected for the whole duration of the lease.
9. The tribunal was satisfied that the respondents failed to comply with the duty in Regulation 3. Regulation 10 requires the tribunal to make an Order against the respondents to pay to the applicant an amount not exceeding three times the amount of the tenancy deposit.

10. The tribunal considered all relevant circumstances prior to making any Order under Regulation 10. The tribunal was satisfied having regard to the entirety of the documentary and oral evidence provided by the applicant that the respondents have failed to act diligently and professionally and failed to account to the applicant in a proper manner. The applicant who seeks return of his deposit and who would challenge the basis of any retention of his deposit, has been disadvantaged by the respondents failure to pay the deposit into a scheme as required.
11. In all the circumstances, the tribunal ordered that the respondents pay to the applicant the sum of twice the amount of the tenancy deposit ie a total of £1,000. This is fair and proportionate in all of the circumstances. The public require to have confidence that residential landlords are operating fairly and that their deposits are secured in accordance with the law in force in Scotland. The respondents have failed to participate in the tribunal process. No mitigating circumstances have been advanced. The deposit was unprotected for the whole duration of the lease. The applicant has been disadvantaged and has not received return of his deposit.

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.

21 March 2023

Legal Member/Chair

Date