



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014.

Chamber Ref: FTS/HPC/PR/21/0982

Re: Property at Balide, Crosshill by Maybole, South Ayrshire, KA19 7QE (“the Property”)

Parties:

Miss Ashleigh Stein, Balide, Crosshill by Maybole, South Ayrshire, KA19 7QE (“the Applicant”)

Mr Carlos Gayubas Urresti, 7 Smith Road, Surrey, Reigate, RH2 8HJ (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent failed to comply with his duty as a Landlord in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) as amended by The Housing (Scotland) Act 2014 (Consequential Provisions) Order 2017 by failing to pay the Applicant’s Tenancy Deposit to the scheme administrator of an Approved Tenancy Deposit Scheme, grants an Order against the Respondent for payment to the Applicant of the sum of FIVE HUNDRED POUNDS (£500) Sterling.

Background

1. By application dated 2 April 2021 the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property) Chamber for an order for payment where a landlord has not paid a deposit into an approved scheme in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicant lodged a copy of part of a Private Residential Tenancy Agreement between the Applicant and the Respondent, 2 pages of text messages between a third party by the name of “Mike” and the

Respondent dated 12-14 June 2020 and a screen shot of a bank transaction for £1000 dated 12 June 2020.

2. On 26 May 2021, the Tribunal issued a Notice of Acceptance of the Application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
3. The Tribunal advised both parties on 2 June 2021 that a Case Management Discussion under Rule 17 of the Regulations would proceed on 8 July 2021. On 2 June 2021 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 23 June 2021. This paperwork was served on the Respondent by Mark Seymour, Process Server on 3 June 2021. A certificate of execution of service was received by the Tribunal administration.
4. On 11 June 2021 the Tribunal issued a Notice of Direction requiring both parties to lodge documents by 23 June 2021. Neither party complied with the Direction. Further the Respondent did not make any written representations by 23 June 2021.

Case Management Discussion

1. The Tribunal proceeded with the Case Management Discussion on 8 July 2021. The Applicant was personally present and explained she wished to be represented by Mike Hammill her partner. The Respondent appeared on his own behalf.
2. Mr Hammill explained that the Applicant sought an order against the Respondent as he had failed to lodge the tenancy deposit into an approved scheme. He explained that with reference to the screen shot of the bank transaction for £1000, this was from Applicant’s account and that she had paid the Respondent £1000 towards the deposit on 12 June 2020. This was not disputed by the Respondent.
3. He went onto explain that at the date of entry on 6 July 2020 the Applicant paid £2500 rent. The Tribunal noted that in terms of Clause 7 £3000 rent was due to be paid at the date of entry. Mr Hammill explained that it had been agreed between parties that only £2500 be paid as the Applicant wanted to carry out some improvements to the toilet and the Respondent had agreed to a reduction of £500 in the advance rent for the Applicant to do that. The Tribunal noted that in terms of Clause 10 £1500 deposit was due to be paid at the date of entry. Mr Hammill advised the Tribunal that at the date of entry the remaining £500 deposit had not been paid to the Respondent despite the terms of Clause 10. He went onto explain that the remaining £500 deposit had still not been paid as the Applicant’s relationship with the Respondent had

broken down. Mr Hammill confirmed that the Applicant had received an email from Safe Deposit Scotland (“SDS”) that the £1000 deposit had been lodged with them by the Respondent. The Tribunal noted from the Application that it was paid to SDS on 31 March 2021. None of this was disputed by the Respondent.

4. Whilst Mr Urresti did not dispute that he had failed to pay the deposit of £1000 he had received in time into SDS, he explained he was under the impression that he only required to pay the deposit into an approved scheme when the full deposit of £1500 had been paid. His intention was always to pay the £1500 to SDS as soon as he received it. However, he had never received the full deposit of £1500 and had only received £1000. The Tribunal pointed out the terms of Clause 10 of the tenancy agreement regarding payment of the deposit by instalments. Mr Urresti was not aware that he should have paid the £1000 into an approved scheme until sometime later when he was in discussions with Mr Hammill about the possibility of the Applicant and Mr Hammill leasing more land from him. It was Mr Hammill who made him aware that he should have paid the £1000 into a scheme, albeit it was not the full amount of the deposit as provided for under the tenancy agreement. Mr Urresti then paid the £1000 deposit immediately into SDS. He stated that the Applicant and Mr Hammill knew more about the tenancy deposit scheme and their rights than he did. He felt aggrieved that they had not paid the remaining £500 as he would have lodged the deposit with SDS on time. He explained he had been a Landlord for between 10-15 years and had always paid deposits into SDS on time and had never had any issues such as this.
5. Mr Hammill asked the Tribunal to award three times the amount of the deposit of £1000. The trust between the parties had broken down as there were various issues which had arisen throughout the tenancy which had caused the Applicant anxiety. They had been asked to leave the Property. On the other hand Mr Urresti did not feel that such a large sanction be imposed in all the circumstances as he had genuinely held the belief that the reference to the deposit was the full deposit of £1500 and not just part payment of that deposit of £1000.

Findings In Fact

6. The Applicant entered into a Private Residential Tenancy Agreement with the Respondent with a start date of 6 July 2020. The tenancy agreement is still in existence and the Applicant continues to live in the Property.
7. In terms of clause 10 of the tenancy agreement the Applicant agreed to pay a deposit of £1500 at or before the start date of the tenancy agreement. Clause

10 also provides that any instalment of the deposit should be paid into an approved scheme within 30 working days.

8. The Applicant paid £1000 deposit to the Respondent on 12 June 2020. The Applicant has not paid the Respondent the full deposit of £1500 with £500 of the deposit remaining unpaid.
9. The Respondent did not pay the £1000 into an approved scheme within 30 working days of the start of the tenancy. He paid the deposit to SDS on 31 March 2021.

Reasons For Decision

10. For the purpose of Regulation 9(2) of the 2011 Regulations the Tribunal found that the application was made in time, the tenancy still being in existence. The 2011 Regulations were intended, amongst other things to put a landlord and a tenant on equal footing with regard to any tenancy deposit and to provide a mechanism for resolving any dispute between them with regard to the return of the deposit to the landlord or tenant or divided between both, at the termination of a tenancy.
11. The amount to be paid to the Applicant is not said to refer to any loss suffered by the Applicant. Accordingly, any amount awarded by the Tribunal in such an application cannot be said to be compensatory. The Tribunal in assessing the sanction level has to impose a fair, proportionate and just sanction in the circumstances, always having regard to the purpose of the 2011 Regulations and the gravity of the breach. The Regulations do not distinguish between a professional and non-professional Landlord such as the Respondent. The obligation is absolute on the Landlord to pay the deposit into an Approved Scheme.
12. In assessing the amount awarded, the Tribunal has discretion to make an award of up to three times the amount of the deposit, in terms of Regulation 10 of the 2011 Regulations.
13. The Tribunal considered that the Respondent's failure to comply with the 2011 Regulations was not wilful. It appeared to the Tribunal that he held the genuine belief that the deposit was the full deposit of £1500 as provided for in clause 10 of the tenancy agreement and not a part payment of £1000. However, the Tribunal considered that being a Landlord with over 10 years' experience, the Respondent should have been aware of his absolute obligation to pay any part or instalment of a deposit within 30 working days under Regulation 3 of the 2011 Regulations particularly when Clause 10 of the tenancy agreement specifically provided that an instalment of the deposit should be so paid. The Tribunal noted that the Respondent had correctly admitted his breach of the Regulations and believed him when he stated he had fully intended to pay the deposit into SDS when he had received the full £1500.

14. On the other hand the Tribunal accepted that the Applicant would have experienced a degree of anxiety in knowing the £1000 paid to the Respondent had not been paid into an approved scheme particularly when it appeared the relationship between the parties had deteriorated fairly quickly after the tenancy had started. However that was not a reason for the Applicant not to comply with her obligation to pay the full deposit of £1500 at the start date which had led to confusion and possibly also to the tensions between the parties.
15. Despite the Tribunal being satisfied that the Respondent had failed to comply with his duties under Regulations 3 (1) of the 2011 Regulations, the purpose of the 2011 Regulations had not been defeated. As soon as the Respondent became aware he should have lodged the £1000 into an approved scheme despite the Applicant not paying the full deposit of £1500 he did so and paid the £1000 into SDS on 31 March 2021.
16. In all the circumstances, the Tribunal was not inclined to order the maximum amount of three times the Tenancy Deposit. The Tribunal considered that a fair, proportionate and just amount to be paid to the Applicant was £500, being half the amount of the deposit of £1000 paid.

Decision

17. The Tribunal accordingly made an Order for Payment by the Respondent to the Applicant of £500.

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.

Shirley Evans

8 July 2021

Legal Member

Date