



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

Chamber Ref: FTS/HPC/PR/18/0894

Re: Property at 2/12, 240 Wallace Street, Glasgow, G5 8AS (“the Property”)

Parties:

Mr Joseph McManus, Mr Callum McPhee, 2/12, 240 Wallace Street, Glasgow, G5 8AS (“the Applicant”)

Ms Aneesha Ahmad, 3 Easdale Gardens, Lindley, Huddersfield, HD3 3UR (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and David Wilson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent did not comply with the duty in Regulation 3 to pay the deposit to the scheme administrator of an approved scheme and ordered the Respondent to pay the Applicant the sum of one thousand six hundred and fifty pounds (£1,650) being two times the amount of the tenancy deposit.

Background

This was a Hearing to consider an application under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 for an order under regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (the 2011 Regulations). The tenancy had been terminated and the deposit had been repaid. The Respondent had provided a letter confirming that she authorised Mr Vaseem Iqbal to deal with the tribunal on her behalf. The Application was received by the Tribunal on 16th April 2018 and the tenancy had come to an end on 29th August 2018. The matter had been some time coming to a Hearing because there had been difficulties in locating the Landlord's address and there had been difficulties in serving documents.

The Hearing

Mr Joseph McManus, one of the applicants was present. The Respondent was not present and was represented by Mr Vaseem Iqbal.

Preliminary Matters

Mr Iqbal confirmed that he had been a director of Lets Direct South Ltd and advised that he had ceased to be a director on 31st October 2016 and had thereafter provided consultancy services for them. He said that the Company had been dissolved on 11th September 2018. He confirmed that he was attending as a personal representative of the Respondent but that he did have some knowledge of the Respondent's letting agents.

Matters of Agreement

It is useful to set out matters agreed between the parties.

1. The Respondent's agent received a deposit of £825 from the Applicants in respect of the property. This was paid at the commencement of the lease on 29th August 2018.
2. The Respondent did not lodge the deposit with an approved scheme in terms of regulation 3 of the 2011 Regulations until 6th March 2018.
3. The Applicants had received return of the full deposit after termination of the lease.

Issues

Parties agreed that the tribunal had to determine the level to be paid to the Applicant by the Respondent.

Mr McManus stated that he had paid the deposit and had been concerned when he had not had confirmation of it being lodged in an approved deposit scheme. He said that he and members of his family had had experience of dealing with landlords where there had been difficulties with deposits and that this was why he had gone to an agent when he entered into the tenancy of the Property.

He said that resolution of the matter had been delayed because of difficulties he had experienced in getting information about the Landlord. He said that a case management discussion on 4th September because the office of the letting agents where he had been told all correspondence for the Landlord had to be sent had refused to accept service of documents by sheriff officers. Mr Iqbal said that it was not clear to him whether service been attempted at the correct address since the Sheriff Officers had attended at the address of Lets Direct Southside Ltd, a different company. He said that if the documentation had been addressed to Lets Direct South Ltd it would not have been accepted.

Mr Iqbal said that the failure to lodge the deposit had not been malicious and that, as soon as the Landlord's agent had been made aware of the omission, the deposit was

sent to Safe Deposits Scotland. He accepted that this was six months after the commencement of the tenancy.

Mr Iqbal's attention was drawn to an email sent to the Applicant by Kendal Gallagher, an employee of the Landlord's agents, on 8th March 2018 which stated " We fully accept responsibility that we were not within the time frame to lodge your deposit into a scheme due to a huge back log we have been experiencing the last few months due to us being short staffed. We do understand this may have been quite unsettling for you however, some situations are outwith our control and for which we do apologise." When questioned Mr Iqbal did not accept that the situation was within the control of the letting agent. He said letting agents are very busy and that Parliament should have consulted more when the regulations were being drawn up and that thirty days was "too tight." He did not accept that more staff resources should have been deployed and said that the failure was a simple error.

Submissions

Mr McManus stated that he considered that the rules should have been followed and he said that he had been badly treated by the Landlord and her agents. He said that the deposit had only been lodged when he had pressed the matter.

Mr Iqbal said that no prejudice had been caused to the Applicants and that the deposit had been dealt with as soon as the Landlord's agents had realised the error. He said that the Landlord fully accepted that matters had not been properly dealt with.

Discussion and Reasons

There was no dispute as to salient facts. The Respondent's agents had received a deposit of £825 from the Applicant and had failed to lodge it in an approved scheme for six months and only did so when challenged by the Applicants.

Regulation 3 of the 2011 regulations states that "A landlord who has received a tenancy deposit in connection with a relevant tenancy must , within 30 working days of the beginning of the tenancy.....pay the deposit to the scheme administrator of an approved scheme." This was not done.

The purpose of the 2011 regulations is not just to protect tenancy deposits but also to afford tenants a facility whereby they may have an independent adjudicator to determine issues surrounding return or otherwise of the deposit. In the case before us the deposit had been lodged with an approved scheme during the currency of the tenancy.

We considered matters. Whilst no direct prejudice was caused to the Applicants the Respondent had failed to comply with the 2011 regulations.

In terms of regulation 10 of the 2011 regulations if satisfied that the Respondent has not complied with regulation 3, we "must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit."

We considered that the application before us was not at the more serious end of the spectrum and that this was because the deposit had been lodged during the currency of the tenancy but it had been unprotected for half of it and we had to take account of that. Mr Iqbal appeared as a personal representative of the Landlord and we did not determine if he is still involved in a letting agency business but, as the Landlord's representative, it was a matter of surprise at the attitude adopted by him in relation to the letting agent's delay in dealing properly with the deposit. He suggested that it was unreasonable to expect such deposits to be made within thirty days of being paid.

It was not considered appropriate for us to make the maximum order we would be permitted to make under the 2011 regulations. We consider it appropriate to make an order for payment to the Applicants of the sum of £1650.

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.

Martin McAllister

Legal Member/Chair

11 January 2019
Date