



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

Chamber Ref: FTS/HPC/PR/20/1486

Re: Property at 84 St Nicholas Street, St Andrews, Fife, KY16 8BH (“the Property”)

Parties:

Ellie Crothers residing at 44 Kilsyth Road, Haggs, Stirlingshire, FK4 1HE and Emily Dark residing at 30 Livingston Street, Newburgh, Fife, KY14 6DQ (“the Applicants”)

And

John O’Brien and Mrs Philomena O’Brien, residing together at 31 Dennistoun Road, Langbank, Port Glasgow, PA14 6 XH (“the Respondents”)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has breached his obligations under regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Background

1. On 1 July 2019 the respondents let to the applicants the property at 84 St Nicholas Street, St Andrews, Fife, KY16 8BH. A Tenancy agreement was entered into which required payment of a deposit of £1650.00. The tenancy ended when the applicants vacated the property on 14 April 2020.

The Case Management Discussion

2. A Case Management Discussion took place before the Tribunal by telephone conference at 2.00pm on 15 October 2020. The Applicants were represented by Mrs D Dark. The respondents were represented by Mr D Doig, solicitor.

3. All parties have made detailed written submissions. All parties agree that the deposit was not lodged with an approved tenancy deposit scheme within 30 working days of commencement of the tenancy. Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 tells me that, in light of that admitted fact, I must make a payment order against the respondents. I can dispose of this case today, without the need for a further hearing.

Findings in Fact

4. The respondent agreed to let the dwelling-house at 84 St Nicholas Street, St Andrews, Fife, KY16 8BH to the applicants from 1 July 2019 to 14 April 2020. A tenancy agreement was entered into setting out the agreed rental and requiring a deposit of £1650.00.

5. The respondents entrusted the negotiation and preparation of the lease to PremierLet Limited, ("the letting agent") of 72 North Street St Andrews. The letting agents were instructed by the respondents to manage the tenancy.

6. On 27 March 2019 the Applicants paid a deposit payment of £1650.00 to the respondents' letting agent. The respondents' letting agent held that money in their own account until 4 February 2020. Parties agreed to end the tenancy on 14 April 2020. The deposit funds were released to the applicants.

7. The letting agent became aware that the deposit funds had not been placed in a approved deposit scheme in January 2020. The respondents did not know that the funds had not been placed in an approved deposit scheme until the tenancy ended.

8. This is the only property the respondents rent out.

Reasons for Decision

9. It is beyond dispute that a deposit of £1650.00 was paid at the commencement of the tenancy. On the facts as I find them to be, the deposit was paid into an approved scheme six months late.

10. The respondents acknowledge the error and accept responsibility for the failure of their letting agent. The respondents have no history of breaches of the 2011 Regulations. The respondents have not acted dishonestly. A full accounting for the deposit has been made.

11. Against those mitigating factors I must balance the undisputed fact that the deposit was unprotected for six months longer than it should have been, and that the error lies with a company which trades as a letting agent dealing with several tenancy deposits.

12. It is beyond dispute that a deposit of £1650.00 was paid at the commencement of the tenancy. On the facts as I find them to be, the deposit was not paid into an approved scheme on time and lay unprotected for six months. The respondents have not acted dishonestly and refunded the deposit in full at the end of the tenancy.

13. The Applicants ask for a payment order. The purpose of the order is not to enrich the applicants. The purpose of the order is to punish the respondents; to mark society's displeasure; to protect society and to ensure the enforcement of the 2011 Regulations in the future.

14. The amount of deposit was £1650.00. A payment order equivalent to the value of the deposit reflects the seriousness of the breach of the 2011 Regulations.

15. The appropriate level of payment order is £1650.00

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant of One Thousand Six Hundred and Fifty pounds (£1650.00) within 14 days of service of this 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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Legal Member

15 October 2020