



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/20/2448

Re: Property at 5 Edmond Terrace, Croftamie, G63 0ER (“the Property”)

Parties:

Marjorie Berdon, residing at 5 Edmond Terrace, Croftamie, G63 0ER (“the Applicants”)

And

Mr Stewart Cameron, residing at 46 Main Street, Glasgow, G63 0BG (“the Respondent”)

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 10 April 2020 the respondent let to the applicant the property at 25 Edmond Terrace, Croftamie, G63 0ER. A Tenancy agreement was entered into which required payment of a deposit of £950.00. On 10 April 2020 the applicant paid the tenancy deposit to the respondent along with her first month’s rental. The tenancy endures.

The Case Management Discussion

2. A Case Management Discussion took place before the Tribunal by telephone conference at 2pm on 8 February 2021. Both the applicant and the respondent were present. One observer, Mr A Walker, was also present by telephone link.

3. Both parties have made detailed written submissions, which discuss a lot of matters which are not relevant to this application. The limits of this tribunal's jurisdiction, and the relevant sections of the 2011 Regulations, were explained to parties, who then willingly focused on the relevant facts for this case management discussion.

4. All parties agree that the deposit was not lodged with an approved tenancy deposit scheme within 30 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 respondent. I can dispose of this case today, without the need for a further hearing.

Findings in Fact

5. In April 2020 the respondent agreed to let the dwelling-house at 5 Edmond Terrace, Croftamie, G63 0ER to the applicant. A tenancy agreement was entered into setting out the agreed rental and requiring a deposit of £950.00.

6. Before taking entry the Applicant paid a deposit payment of £950.00 to the respondent. The deposit funds were not placed into an approved scheme until 03 June 2020. The tenancy deposit should have been paid into an approved scheme not later than 10 May 2020, so was paid into an approved scheme 24 days late.

7. On 1 June 2020 the respondent realised that rigid adherence to COVID-19 restrictions had prevented him from banking the deposit payment, and that he had allowed more than 30 days to pass. He immediately took steps to pay the deposit funds to Safe Deposit Scotland, an approved scheme. He passed details of the approved scheme to the applicant.

Reasons for Decision

8. It is beyond dispute that a deposit of £950.00 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 24 days late. This tenancy has not yet ended, although there I am told there is a separate application for recovery of possession of the property.

9. The applicant says that she was deprived of the use of the deposit monies between 10 April 2020 and 3 June 2020. The applicant seeks a payment order of three times the amount of the deposit.

10. The respondent acknowledges his error. The respondent has no history of breaches of the 2011 Regulations. A full accounting for the deposit has been made. Against those mitigating factors I must balance the undisputed fact that the deposit was unprotected for 24 days.

11. The purpose of the order is not to enrich the applicant. The purpose of the order is to punish the respondent; to mark society's displeasure; to protect society and to ensure the enforcement of the 2011 Regulations in the future.

12. The amount of deposit was £950.00. The deposit was unprotected for 24 days longer than it should have been. To date the lease has endured for 304 days. Although the 2011 Regulations have been breached, the breach is not at the most serious end of the scale. It is reasonable to take the maximum penalty and divide it by the duration (in days) of the lease, then apply a multiplier of the number of days during which the deposit was unnecessarily unprotected. That brings out a figure of £225.00 which adequately reflects the seriousness of the breach of the 2011 Regulations.

13. The appropriate level of payment order is £225.00

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant of Two Hundred and Twenty-Five pounds (£225.00) 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.

Paul Doyle

Legal Member

8 February 2021