



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 3 of the Tenancy Deposit (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/22/1746

Re: Property at 1 0/2 Littlemill Court, Bowling, West Dunbartonshire, G60 5BP (“the Property”)

Parties:

Miss Joyce Walker, 26 Semple Hill, Erskine, PA8 6DQ (“the Applicant”)

JYB Properties Ltd, 251 Kirkintilloch Road, Bishopbriggs, Glasgow, G64 2JD (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be dismissed.

Background

The Applicant lodged an application on the 7th June 2022 under Rule 103 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) seeking a sum under the Tenancy Deposit (Scotland) Regulations 2011.

Lodged with the application were :

1. Tenancy Agreement between the Respondent and Hugh Mulgrew

The papers were served on the Respondent by Sheriff Officers on 26th July 2022.

On 27th July 2022 Mr Brown, Managing Director of the Respondents sent an email to the Tribunal advising that the property had been purchased by himself and his wife in 2017 from Hugh Mulgrew. The property was transferred to the Respondent, of which he was Managing Director, in 2019.

A series of emails were then sent by both the Applicant and Mr Brown putting their various points across.

Case Management Discussion

The Case Management Discussion (“CMD”) took place by teleconference. The Applicant represented herself. She did not join the conference call at 10am and the Clerk telephoned her on the instruction of the Chairperson to ascertain if she was joining. She then dialled in. The Respondent was represented by James Brown, Director.

The Chairperson introduced everyone and explained the purpose of a CMD in terms of Rule 17.

The Chairperson ascertained from the Applicant that she had entered in to the tenancy on 2nd February 2016, the landlord being Hugh Mulgrew. She never met Mr Mulgrew and dealt with his letting agent. She paid a deposit of £550 a week before she moved in to the property. She said she paid it to Rent Locally. When she was asked if it was actually paid to a different letting agent she was adamant that she paid it to Rent Locally. She confirmed that she received a letter in 2017 telling her that the property had been sold to Mr and Mrs Brown. She did not pay any further deposit to them. The Applicant confirmed that she vacated the property on 1st April 2022. She withheld her last month’s rent as she was not confident that she would receive return of the deposit. She was satisfied that by withholding the rent her deposit had been returned.

The Applicant said that she had brought the Application because her deposit had not been placed in an approved scheme. She was seeking an order for payment.

Mr Brown said that he and his wife had bought the property in 2017 and transferred it to their limited company in 2019. He said that Rent Locally were the letting agent that he had dealt with, and that the letting agent for Mr Mulgrew at the time of the sale was RH Letting. He had produced a letter from them dated 10th May 2016 confirming that they were the agent. The Applicant confirmed that she had seen that letter.

Mr Brown said that his previous letting agent was The Mortgage Finance Store and he had produced a letter from them dated 17th August 2022.

In that letter they confirmed that they had attempted to obtain the deposit from the previous landlord but had been unsuccessful in doing so.

Findings In Fact

1. The Applicant entered in to a tenancy agreement for the property on 2nd February 2016;
2. The landlord when the tenancy commenced was Hugh Mulgrew;
3. The Applicant paid a deposit of £550 to Mr Mulgrew’s letting agent;
4. There is no evidence to suggest that Mr Mulgrew paid the deposit in to an approved scheme;
5. In or around 2017 the property was sold by Mr Mulgrew to Mr & Mrs Brown;

6. In or around 2019 Mr and Mrs Brown transferred the property to a limited company;
7. The Applicant remained as a tenant;
8. The deposit was not passed on to the Respondent or its letting agent.
9. The Applicant vacated the property on 1st April 2022;
10. The Applicant did not pay her last month's rent in lieu of the deposit.

Reasons For Decision

The Application has been brought under the Tenancy Deposit (Scotland) Regulations 2011, based on an alleged failure of the Respondents of their duties under Regulation 3, and seeking a payment in terms of Regulation 10.

Regulation 3 is as follows:

3.—(1) 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—

(a) pay the deposit to the scheme administrator of an approved scheme; and

(b) provide the tenant with the information required under regulation 42.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

(a) in respect of which the landlord is a relevant person; and

(b) by virtue of which a house is occupied by an unconnected person,

unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.

Regulation 10 is as follows:

10. If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal—

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(b) may, as the First-tier Tribunal considers appropriate in the circumstances of the application, order the landlord to—

(i) pay the tenancy deposit to an approved scheme; or

(ii) provide the tenant with the information required under regulation 42.

There was no question of credibility or reliability to be determined. The parties were agreed on the facts.

The Respondent did effectively refund the deposit amount to the Applicant by not insisting on the final month's rent.

Regulation 3 imposes an obligation on a landlord who has received a tenancy deposit in connection with a relevant tenancy and the obligation is to place it in to an approved scheme within 30 working days of the beginning of the tenancy.

It is clear that the Respondent, when purchasing the property, and despite making inquiry, did not receive the deposit. There can therefore be no obligation on the Respondent to deposit it in an approved scheme if the Respondent did not receive it. As there is no obligation there can be no breach, and accordingly there can be no penalty.

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.

A Kelly

09/09/22

Legal Member/Chair

Date