



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/21/0031

Re: Property at Flat 1/1, 6 Kirkmuir Drive, Glasgow, G73 4BE (“the Property”)

Parties:

Miss Amna Shah, Flat 1/1, 6 Kirkmuir Drive, Glasgow, G73 4BE (“the Applicant”)

Mr Colin Jux, Ms Nicky Jux, UNKNOWN, UNKNOWN (“the Respondents”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the Respondents in the sum of Five hundred and fifty pounds (£550) Sterling.

Background

- 1 By application to the Tribunal the Applicant sought an order under the Tenancy Deposit (Scotland) Regulations 2011 on the basis that the Respondent had failed to lodge her deposit in a scheme and provide the required information within the statutory timescales.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 12 March 2021. However following a failed attempt to serve the application paperwork on the Respondents the Case Management Discussion was postponed until 19th April 2021. Notification of the application paperwork together with the date, time and instructions for joining the Case Management Discussion was given by advertisement on the Tribunal website.

The Case Management Discussion

- 3 The Case Management Discussion took place on 19 April 2021. The Applicant was present. Neither Respondent was present. The Legal Member was content that service of the application paperwork had been properly executed by advertisement on the Tribunal website and therefore determined to proceed in the Respondents' absence.
- 4 The Applicant advised that her deposit had not been lodged with a tenancy deposit scheme until 18 November 2020, four years after her tenancy had commenced. She had enquired with the Respondents about the deposit which she believed had prompted the payment of the deposit into a scheme in November 2020. She confirmed that she was still in the property but was looking to move elsewhere.

Findings in Fact and Law

- 5 The parties entered into a Short Assured Tenancy Agreement dated 15th November 2016.
- 6 In terms of the said Tenancy Agreement the Applicant undertook to pay a deposit of £550. The deposit was paid on 9 November 2016.
- 7 The Respondents failed to lodge the deposit with an approved tenancy deposit scheme until 18 November 2020.
- 8 The Respondents are in breach of Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011.

Reasons for Decision

- 9 The Tribunal determined the application having regard to the application paperwork, the written representations from the parties and the verbal submissions at the hearing. The Tribunal was satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties.
- 10 The 2011 Regulations specify clear duties which are incumbent on landlords in relation to tenancy deposits. Regulation 3 requires a landlord to pay any deposit received in relation to a relevant tenancy to an approved tenancy deposit scheme within thirty working days of the beginning of the tenancy. The

deposit must then be held by the scheme until it can be repaid in accordance with the requirements of the Regulations following the end of the tenancy.

- 11 The Tribunal accepted based on the evidence from the Applicant that a deposit in the sum of £550 had been paid in accordance with the terms of the Tenancy Agreement. It was also clear from the evidence before the Tribunal that the Respondents had not lodged the deposit with an approved scheme until 18 November 2020. The Respondents were therefore in breach of Regulation 3.
- 12 Regulation 9 provides that any tenant may apply to the Tribunal for an order where the landlord has not complied with the duty under regulation 3. If satisfied that the landlord has failed to comply, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. Accordingly having been satisfied that the Respondent had failed to comply, the Tribunal then had to consider what penalty to impose having regard to the particular facts and circumstances of the case. The Tribunal considered it was able to determine this issue without the requirement for a hearing as there were no facts in dispute, on the basis that the Respondents had failed to enter the proceedings.
- 13 The Tribunal considered the requirement to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach. In doing so the Tribunal took into account the fact that the deposit had remained unprotected for over four years which went against the purpose of the regulations in ensuring deposits were secure.
- 14 The Tribunal also had to consider the purpose of Regulation 9, namely to penalise landlords to ensure they comply with the duty to protect and safeguard tenancy deposits. The provisions of Regulation 9 left no discretion where a landlord is found to have failed to comply. The Tribunal was conscious that the regulations permitted it to award an amount of up to three times the deposit where a finding of breach is made. The Tribunal was not persuaded that the circumstances of the matter before it warranted an award at the higher end of the scale. However the Tribunal did considered that an amount equivalent to the deposit was reasonable and proportionate in this case. The Tribunal therefore made an order for payment in the sum of £550 against the Respondent.

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.

19/04/2021

Legal Member/Chair

Date