

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/21/1065

Re: Property at 2/2, 40 Daisy Street, Glasgow, G42 8HF (“the Property”)

Parties:

Mr Seimi Rowan, 78A High Street, Dunbar, EH42 1JH (“the Applicant”)

Mrs Kleida Bajrami, 21 3F1, Bernard Street, Edinburgh, EH6 6PW (“the Respondent”)

Tribunal Members:

Paul Doyle (Legal Member)

Decision

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

Background

1. On 17/10/2020 the respondent let to the applicant and one other person the property at 2/2, 40 Daisy Street, Glasgow, G42 8HF. The tenancy commenced on 25/10/2020. A Tenancy agreement was entered into which required payment of a deposit of £650. The applicant’s one-half share of that deposit was £325.00. The tenancy ended in March 2021.

The Case Management Discussion

2. A Case Management Discussion took place before the Tribunal by telephone conference at 10.00am on 13 August 2021. The Applicant was present and unrepresented. The respondent was represented by Mr D Gibb of Tay Letting Ltd.

3. The respondent accepts that the applicant paid £325.00 as a deposit at the commencement of the tenancy. Both 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

4. The applicant occupied the property between May 2020 and March 2021. During that period, one joint tenant moved out, and was replaced by another joint tenant. As a result, his first tenancy ended and a new tenancy agreement was drawn up, but there was no interruption in his period of occupancy.

5. The applicant first rented the property from the respondent with a third-party tenant under a different lease on 23 May 2020. They had paid a deposit of £650.00 at the start of their separate tenancy. There was a delay in placing their separate deposit in an approved tenancy deposit scheme, but, by 12 August 2020, the deposit in their names rested with SafeDeposits Scotland. The Third-party tenant vacated the property. A new tenant replaced the third-party tenant in the property. A separate tenancy dated 17 October 2020 was signed to create a new tenancy for the applicant and his new joint tenant.

6. In October 2020 the respondent agreed to let the property at 2/2, 40 Daisy Street, Glasgow, G42 8HF to the applicant and one other person. A tenancy agreement was entered into setting out the agreed rental and requiring a deposit of £650. The new joint tenant paid £325.00 to the respondent's letting agents as her one-half share of the tenancy deposit. The tenancy agreement narrated that the deposit would be paid into an approved tenancy deposit scheme within 30 days of commencement of the lease.

7. The applicant did not pay anything towards the deposit required by the tenancy entered into on 17 October 2020 because the respondent's agents intended to use his existing deposit as the deposit under the new tenancy.

8. The tenancy ended in March 2021. Sometime after the termination of the tenancy, the applicant's share of the deposit was paid to him.

9. The applicant's one-half share of the deposit was £325.00. There was a delay of 58 days in placing the deposit with an approved tenancy deposit scheme.

10. The respondent had no intention of depriving the applicant of repayment but ignored the terms of the lease between the parties which (correctly) narrated that the deposit would be placed in an approved scheme within 30 days of the commencement of the tenancy.

Reasons for Decision

11. The applicant paid £325.00 as his share of the deposit at the commencement of the tenancy. On the facts as I find them to be, the deposit was paid into an approved scheme 58 days late.

12. The respondent acknowledges her error. 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 58 days too long.

13. The Applicant asked me to make a payment order. 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. Although the respondent refunded the applicant after termination of the tenancy, the deposit was unprotected for 58 days despite the terms of the lease the respondent presented to the applicant to sign, which narrates the requirements of the 2011 Regulations.

14. The applicant seeks a payment order equivalent to three times the value of the total deposit. He says the respondent's conduct is wilful negligence and that the respondent is an experienced landlord.

15. For the respondent, Mr Gibb said that the failings were failings of previous letting agents whose management systems were not perfect. He explained that the delay coincides with the initial restrictions caused by the Covid pandemic, and suggests that administrative errors were made when the landlord's previous agents were struggling to cope with restrictions which were new to all of us.

16. The applicant's share of the deposit was £325.00. The deposit was not protected for 58 days. The applicant's period of occupation under the tenancies was 10 months. For almost 20% of the duration of the tenancy the deposit was unprotected.

17. The deposit was paid into an approved scheme, although late. It was paid into an approved scheme at a time when businesses were struggling to cope with new restrictions. The applicant has not suffered any loss.

18. A payment order equivalent to the value of the applicant's one-half share of the deposit reflects the seriousness of the breach of the 2011 Regulations.

19. The appropriate level of payment order is £325.00

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant of Three Hundred and Twenty-five pounds (£325.00) 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.

P Doyle

Legal Member

13 August 2021