



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/PR/20/0638

Re: Property at 11 Baird Gait, Cambuslang, Glasgow, G72 8SS (“the Property”)

Parties:

Mr Paul Walker, 22 Coulters Crescent, Carmunnock, Glasgow, G76 9AY (“the Applicant”)

Mr Philip Rough, Flat 4/1, 10 Haughview Terrace, Glasgow, G5 0HB (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order in the Sum of TWO THOUSAND SIX HUNDRED POUNDS be granted.

Background

1. By application received between 24 February 2020 and 26 March 2020 (“the Application”), the Applicant made an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Chamber”) for a determination and an order in terms of Rule 103 of the Rules and Regulation 9 of the Regulations. The Application comprised an application form, copy tenancy agreement, evidence of payment of a deposit of £1300.00 to the

Respondent on 3 May 2018 and evidence that the deposit was lodged with a tenancy deposit scheme provider on 28 August 2018.

1. On 1 April 2020, the Chamber President accepted the Application and a Case Management Discussion (“CMD”) was fixed for 6 August 2020 at 14.00 by telephone conference call. The Application was intimated to the Respondent. The CMD was intimated to both Parties.
2. The CMD took place on 6 August 2020 at 14.00. The Applicant took part. The Respondent did not take part. The Tribunal explained the role of the Tribunal and its powers within the Scottish Courts Administration. The Tribunal explained the purpose of the CMD in terms of Rule 17 of the Rules.

Summary of Discussion

3. The Tribunal advised the Applicant that it had read and was familiar with all of the background papers. The Tribunal asked the Applicant to confirm that he had paid a tenancy deposit of £1,300.00 as stated in the Application and to confirm if he had been advised by the Respondent of with which tenancy deposit scheme provider and when the deposit had been lodged.
4. The Applicant confirmed that he had lodged the deposit of £1,300.00 on 3 May 2018 as stated in the Application but had not been advised by the Respondent of with which tenancy deposit scheme provider the deposit had been lodged nor when. This information became known to him when he received an email from SafeDeposits Scotland on 29 January 2020. The Applicant noted that the Respondent had lodged the deposit on 30 August 2018, outwith the statutory time limit, and had misled SafeDeposits Scotland of this fact by stating that the tenancy had begun on 1 August 2018.
5. The Applicant further advised me, as evidenced by emails lodged by him as part of the Application, that he had asked the Respondent on several occasions to confirm that the tenancy deposit had been lodged to no avail.
6. The Applicant stated that if an order were to be granted, he did not seek the full amount permitted by the Regulations.

Findings of the Tribunal.

7. From the Application and the CMD and having no reason to disbelieve the Applicant, the Tribunal found the following facts to be established: -
 - i) There was a tenancy between the Parties beginning on 30 April 2018;

- ii) The Applicant paid a tenancy deposit of £1,300.00 to the Respondent by bank transfer on 3 May 2018;
- iii) The tenancy deposit was lodged with SafeDeposits Scotland on 30 August 2018, being 78 working days after the date of its payment to the Respondent;
- iv) No information in respect of the lodging of the tenancy deposit was provided by the Respondent to the Applicant.

Decision of the Tribunal and Reasons for the Decision.

8. The Tribunal had regard to Regulations 3 and 42 of the Regulations which state:-

“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” and “The landlord must provide the tenant with the information (a)confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;(b)the date on which the tenancy deposit was paid to the scheme administrator;(c)the address of the property to which the tenancy deposit relates;(d)a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;(e)the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and(f)the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.”

9. Having found that the Respondent had not lodged the tenancy deposit within the timeframe set out in Regulation 3 and had not provided the information required by Regulation 42, the Tribunal determined that the Respondent had not complied with these Regulations.

10. The Tribunal had then had regard to Regulation 10 of the Regulations which states:- *“If satisfied that the landlord did not comply with any duty in regulation 3 the tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit”.*

11. Accordingly, having been satisfied that the Respondent did not comply with Regulation 3 of the Regulations, the Tribunal was obliged to grant an order.

12. The Tribunal then had regard to Rule 17(4) of the Rules which states that the Tribunal *“may do anything at a case management discussionincluding making a decision”* and proceeded to make an order in terms of Regulation 10 of the Regulations.

Order and Reasons for the Order.

13. The Tribunal took account of all of the information before it including the Applicant's views. The Tribunal took account of the fact that the tenancy deposit had been lodged with an approved scheme provider, albeit 48 working days outwith the statutory time frame. The Tribunal had regard to the purpose of the Regulations which is not only to ensure that landlords lodge tenancy deposits with an independent agency but also advise tenants where deposits are held to reassure tenants that deposits are not being misused. In this instance, the Applicant did not have the reassurance that the tenancy deposit was held securely for the duration of the tenancy. The Tribunal took into the fact that the amount of the deposit is considerable and so the uncertainty for the Applicant was significant. Accordingly, the Tribunal took the view that twice the amount of the tenancy deposit was reasonable and proportionate in all the circumstances and made an order for £2,600.00. Had the tenancy deposit not been lodged with an approved scheme provider, the Tribunal would have made an order for the full 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.

Karen Moore

6th August 2020

Legal Member/Chair

Date