



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

Chamber Ref: FTS/HPC/PR/20/0951

Re: Property at 3/1 29 Braeside Street, Glasgow, G20 6QU (“the Property”)

Parties:

Miss Maria Inmaculada Morcillo Aparicio, Mr Damian Dabrowski, 5/36 6 Havannah Street, Glasgow, G4 0AP (“the Applicant”)

Mr Samuel Jones, Mrs Elisabeth Rigol, 3/1 29 Braeside Street, Glasgow, G20 6QU (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Payment against the Respondents should be made in favour of the Applicants in the sum of ONE THOUSAND THREE HUNDRED AND NINETY POUNDS STERLING (£1,390)

Introduction

This is an application under Rule 103 and the Tenancy Deposit Schemes (Scotland) Regulations 2011.

A Case Management Discussion (CMD) was held at 11.30 am on Thursday 10 September 2020.

Sheriff Officers failed to intimate service of the relevant proceedings upon the respondents. In the circumstances, service on the respondents took place under Rule 6A by advertisement on the Chamber website. The advertisement commenced on 6 August 2020 and was present for more than the required 14 days. This has been certified.

The Applicants, Miss Maria Inmaculada Morcillo Aparicio and Mr Damian Dabrowski, represented their own interests at the CMD. Mr Dabrowski made oral submissions.

The respondents are Mr Samuel Jones and Mr Elisabeth Rigol. They did not participate in the CMD. They lodged a response and vouching in advance of the CMD. They participated in the CMD and represented their own interests. Mr Jones made oral submissions.

Findings and Reasons

The property is Flat 3/1, 29 Braeside Street, Glasgow G20 6QU.

The applicants are the former tenants. The respondents are the former landlords.

The parties entered into a private residential tenancy which commenced on 1 July 2019. The rent was stipulated at £695 per calendar month. In terms of the written lease a deposit was required to be paid in the sum of £1,390 (twice the monthly rent). In terms of Clause 11 of the written lease it was said that the deposit would be held by Letting Protection Scotland.

A Metro Bank statement has been produced which clearly shows that the deposit in the sum of £1,390 was remitted on 3 July 2019.

There was more than one written lease entered between the parties for reasons which are not fully explained, nor is this material to the outcome of this application.

The applicants were served with a notice to leave which is dated 16 December 2019. The applicants vacated the property on 16 January 2020.

In terms of Regulation 3 the respondents have a legal duty to pay the deposit into an approved scheme within 30 days.

In terms of Regulation 10 the Tribunal must make an order against the respondents for an amount not exceeding three times the amount of the deposit in the event their failure to comply with the Regulations is established.

The respondents have lodged much by the way of written material. The majority of this is focused on the condition of the property when the applicants vacated it. Such factors are irrelevant to the Tribunal's consideration of the present application.

Importantly however the written submission of the respondents include Adjudication Decisions issued by Letting Protection Service Scotland. These evidence clearly that the respondents did lodge the full deposit of £1,390 with Letting Protection Service Scotland. One half each was allocated to each of the applicants. The deposit references are 168882930 and 16882931.

The Adjudication Decisions dismiss all claims made by the respondents which were advanced by means of seeking to withhold the tenancy deposit/s totalling £1,390. This total sum was repaid back to the applicants.

Despite the tenancy deposit scheme being paid into an approved scheme it was frankly and candidly accepted by Mr Jones at the teleconference CMD that this did not occur timeously. The monies were paid into the scheme outwith the 30 days. Mr Jones could not direct the Tribunal to an exact date but estimated that the deposit was paid to the scheme in or about October 2019. Mr Jones attempted to excuse himself and his co respondent from the requirements under the Regulations on the basis that it was initially intended that they also

occupy the property, or part of it. His evidence and submissions in this respect lacked specification and were incredible. He was inconsistent and could not provide any clarity over their occupation at all. Access only, in fact, was anticipated. Such factual circumstances do not negate the mandatory requirements of Regulation 3.

The Regulations are in force to protect tenants and to improve standards across the private residential letting sector in Scotland.

Given the apparent active dispute between the parties and Mr Jones' submissions an opportunity was afforded to the respondents, if they so wished, to seek legal advice and to lodge a focused written submission addressing the law and to provide all further relevant evidence upon which they were to rely. Mr Jones then adopted an altered approach. He accepted that the regulations had been breached and wished a final determination of the application.

After hearing further from Mr Dabrowski, the Tribunal proposed that an Order should be made under Regulation 10 for an amount representing one times the amount of the tenancy deposit of £1,390. Mr Jones accepted such proposed disposal as reasonable.

The Tribunal took account of mitigating circumstances which did exist. The respondents are registered landlords. They did pay the money into an approved scheme, albeit late and outwith the strict requirements of the Regulations. The applicants have had their tenancy deposit returned to them by the scheme after adjudication. The respondents have cooperated in the tribunal process.

In all the circumstances an Order is made against the respondents in the sum of £1,390. This is fair and proportionate. Any greater sum would unjustifiably enrich the applicants.

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.

⁴ R Mill

10 September 2020

Legal Member/Chair

Date