



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

Chamber Ref: FTS/HPC/PR/20/1272

Re: Property at 15 Mentone Gardens, Edinburgh, EH9 2DJ (“the Property”)

Parties:

Mr Maharshi Chakraborty, Luxemburger Str 124, 23-35, 50939, Cologne DE, Germany (“the Applicant”)

Mr Zeshan Ellahi Ahmed, 12 Arboretum Road, Edinburgh, EH3 5PN (“the Respondent”)

Tribunal Members:

H Forbes (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicant in the sum of £1200.

Background

1. By application dated 31st May 2020 and made under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”), the Applicant applied for an order in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”). The parties entered into a tenancy agreement in respect of the Property which commenced on 27th September 2019 and ended on 27th March 2020. A deposit in the sum of £800 was paid by the Applicant to the Respondent. At the end of the tenancy the Applicant discovered that the deposit had not been paid into an approved tenancy deposit scheme. The deposit was returned to the Applicant through payment from an incoming tenant on 30th April 2020. The Applicant’s representative included a copy of the tenancy agreement, bank statements, a call log and copy social media message and email correspondence between the parties

with the application. The Applicant was seeking an award of £2400, which is three times the deposit.

2. On 29th July 2020, Sheriff Officers intimated the application and forthcoming Case Management Discussion on the Respondent.
3. By email dated 7th August 2020, the Applicant's representative lodged transcripts of WhatsApp messages from the Respondent to the Applicant, which messages were received by the Applicant on 29th July 2020.

The Case Management Discussion

4. A Case Management Discussion ("CMD") took place by teleconference on 19th August 2020. Neither party was in attendance. The Applicant was represented by Mr Alex Hendrikson.
5. The Tribunal considered the terms of Rule 29 of the Rules. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the CMD, together with details on joining the telephone conference. The Tribunal determined that the requirements of Rule 24(1) had been satisfied and that it was appropriate to proceed with the application in the absence of the Applicant upon the representations of the Applicant and the material before the Tribunal.
6. Mr Hendrikson set out the Applicant's case. The tenancy commenced on 27th September 2019 and ended on 27th March 2020. A deposit in the sum of £800 was paid by the Applicant to the Respondent. At the end of the tenancy, the Applicant encountered significant difficulty in trying to get the deposit returned, as evidenced by email correspondence between the parties. Eventually, the Applicant suggested that the incoming tenant could pay £800 to the Applicant, instead of paying rent to the Respondent. This was agreed between the parties and this took place on 30th April 2020. The Respondent did not pay the deposit into an approved tenancy scheme. He, therefore, failed to carry out his duties.
7. Mr Hendrikson said that a third party, namely the incoming tenant, ought not to have been involved in the return of the deposit to the Applicant. The procedure was entirely dependent on the compliance of the incoming tenant. This, combined with the attitude of the Respondent in social media messages indicated that he had not complied with his duties as a landlord.
8. Responding to questions from the Tribunal regarding whether the three tenancy deposit schemes had been contacted to evidence that the deposit had not been lodged, Mr Hendrikson said that had not been done; however, the circumstances of the case, particularly the fact that the Respondent had to rely on a third party to pay the equivalent of the deposit to the Applicant, and the content of messages between the parties at the end of the tenancy, was evidence that the deposit was not lodged with an approved scheme. Furthermore, the WhatsApp messages of 29th July 2020 indicated that the

Respondent was aware of the application and CMD, at which time he could have provided representations to the Tribunal indicating that the deposit had been lodged.

Findings in Fact

9.
 - (i) The parties entered into a tenancy agreement in respect of the Property that commenced on 27th September 2019 and ended on 27th March 2020.
 - (ii) A tenancy deposit of £800 was paid to the Respondent by the Applicant at the start of the tenancy.
 - (iii) The deposit was not lodged with an approved tenancy deposit scheme.
 - (iv) A sum equal to the deposit was paid to the Applicant by an incoming tenant to the Property with the agreement of the Respondent.
 - (v) The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme.

Reasons for Decision

10. The Respondent is aware of the application and has been so aware since 29th July 2020. He has not sought to lodge any written representations or take part in the process. He has not disputed the facts or provided any mitigating circumstances. The deposit was not lodged with an approved tenancy deposit scheme within 30 days of the commencement of the tenancy as required by Regulation 3. The deposit remained unprotected throughout the duration of the tenancy.
11. The Regulations were put in place to ensure compliance with the tenancy deposit scheme, and to provide the benefit of dispute resolution for parties. The Tribunal considers that its discretion in making an award requires to be exercised in the manner set out in the case *Jenson v Fappiano (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015* by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case. The Tribunal must consider the facts of each case appropriately.
12. Whilst the Applicant sought the maximum of three times the deposit value to be awarded, the Tribunal took guidance from the decision of the Upper Tribunal UTS/AP/19/0020 which states: *'Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals.'*

13. On the information before it, the Tribunal did not consider this to be a case at the most serious end of the scale, however, the Tribunal considered the manner in which the Respondent dealt with return of the Applicant's deposit to be reckless and indicative of a failure to observe his responsibilities as a landlord. The Tribunal did not take into account the abusive nature of the WhatsApp messages of 29th July 2020 in making its decision; however, it noted that the content of the messages suggested that the Respondent had failed to make himself aware of the tenancy deposit scheme and his responsibilities as a landlord. The Tribunal took into account the length of the tenancy and the length of time for which the deposit was unprotected.
14. The facts were not denied by the Respondent. No mitigating circumstances were put forward by the Respondent. Taking all the circumstances into account, the Tribunal decided it would be fair and just to award a sum of £1200 to the Applicant. This is one and a half times the deposit.

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.

H Forbes

Legal Member/Chair

19th August 2020

Date