



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/PR/20/1688

Re: Property at 7/3 Admiralty Street, Edinburgh, EH6 6JT (“the Property”)

Parties:

Mr Andreas Athanasopoulos, Kleious 4, Athens, 16345, Greece (“the Applicant”)

Ms Gloria Kerr, 2a Kirkgate, Currie, EH14 5NU (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

BACKGROUND

- 1 By lease dated 1 September 2019 the Respondent let the Property to the Applicant;
- 2 The start date of the tenancy was 2 September 2019;
- 3 A tenancy deposit of £900 was paid to the letting agents acting for the Respondent;
- 4 The deposit was lodged with an approved tenancy deposit scheme on 28 November 2019;
- 5 The lease ended on 28 July 2020;
- 6 The Applicant presented an application to the Tribunal on 10 August 2020 seeking an order for payment in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the TDS Regs”);

THE CASE MANAGEMENT DISCUSSION

- 7 The Case Management Discussion was held on 16 October 2020 and was conducted by teleconference;
- 8 The Applicant did not participate. He had previously contacted the Tribunal stating he was now living in Greece and raising concerns about participating from abroad. The Tribunal responded advising that if he did not participate a decision could be taken in his absence. On the basis the Tribunal was satisfied that he was aware of the Case Management Decision, on the basis of the correspondence between the Applicant and the Tribunal and on the basis that the facts were not in dispute, the Tribunal proceeded with the Case Management Discussion in the absence of the Applicant;
- 9 The Respondent was represented by Henry McAdam of Five Management, Edinburgh, the letting agents for the Property;
- 10 Mr McAdam was content to proceed in the absence of the Applicant. He accepted responsibility for the failure to lodge the deposit timeously. He explained the following:-
 - a) He has been letting property in the Edinburgh area for over 30 years and has done so effectively and without incident during that time;
 - b) His practice is to place deposits received from tenant in a "deposit account" until the funds are then forwarded to an approved tenancy deposit scheme;
 - c) Due to an administrative error, this particular deposit was not forwarded timeously;
 - d) The matter was noted while routine audit of the "deposit account" was being conducted, the error noted and the funds were immediately lodged with an approved scheme;
 - e) A review of their own systems has now been undertaken to reduce or remove the risk of a repeat of this situation;
 - f) He accepted the ethos of the TDS Regs and accepted that a penalty would be imposed;

FINDINGS IN FACT

- 11 The following facts were found to be admitted or proved:-
 - a) By lease dated 1 September 2019 the Respondent let the Property to the Applicant;
 - b) The start date of the tenancy was 2 September 2019;
 - c) A tenancy deposit of £900 was paid to the letting agents acting for the Respondent;
 - d) The deposit was lodged with an approved tenancy deposit scheme on 28 November 2020. It was not lodged within 30 days of the commencement of the tenancy;
 - e) The lease ended on 28 July 2020;
 - f) The Applicant presented an application to the Tribunal on 10 August 2020 seeking an order for payment in terms of Regulation 10 of the TDS Regs;

REASONS FOR DECISION

12 The TDS regulations provide as follows:-

3.(1) 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.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

(a) in respect of which the landlord is a relevant person; and

(b) by virtue of which a house is occupied by an unconnected person,

unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.

9.(1) A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(b) may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to—

(i) pay the tenancy deposit to an approved scheme; or

(ii) provide the tenant with the information required under regulation 42.

13 The TDS regulations were introduced to address a perceived mischief whereby some Landlords secured payments of deposits from tenants, which deposits were due to be repaid at the end of the tenancy but, often, were not

repaid for a variety of reasons. Previously, any dispute in relation to repayment of a deposit, in the absence of agreement between the parties, required to be referred to Court which gave rise to costs for tenants in making the necessary application. The TDS regulations are designed to ensure that the deposits paid are secured and available for repayment at the end of any tenancy and, in addition, that, in the event of any dispute, a cost free dispute resolution process is available.

- 14 In the present case, it did not appear to the Tribunal that there was any mischief nor, indeed, and intentional act or oversight, on the part of the Respondent nor her letting agents, rather, there was an isolated error in this particular case;
- 15 In this case it appears that the Respondent's letting agents are generally responsible agents. They took immediate steps to rectify the oversight once it became apparent;
- 16 This was a case in which the error was an oversight and the failure to comply with the TDS Regs is of a nature which falls towards the bottom end of any scale of breaches of the TDS Regs. In the circumstances, the Tribunal imposed a penalty equal to one half of the tenancy deposit, being a sum of £450.00.

DECISION

The Tribunal orders the Respondent is to make payment to the Applicant in the sum of £450.00

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.

Virgil Crawford

16 October 2020

Legal Member/Chair

Date