



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/20/2151

Re: Property at Flat 2-1, 96 Saracen Street, Glasgow, G22 5AU (“the Property”)

Parties:

Mr Attar Javeed Hussain, Flat 2-1, 94 Saracen Street, Glasgow, G22 5AU (“the Applicant”)

Miss Lynn Sanders, 223 Stoneyhurst Street, Glasgow, G22 5PE (“the Respondent”)

Tribunal Members:

Gillian Buchanan (Legal Member)

Decision

At the Case Management Discussion (“CMD”) the Applicant was in attendance and the Respondent was also in attendance represented by Mr George McKenna.

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

- The Respondent leased to the Applicant the subjects known as Flat 2-1, 96 Saracen Street, Glasgow, G22 5AU (“the Property”) in terms of a Private Residential Tenancy Agreement dated 28 July 2018 (“the PRT”).
- The PRT contained no start date but the parties were agreed that the tenancy commenced on 28 July 2018 and that the rent payable in terms thereof was £575 per calendar month for the first six months and thereafter £595 per calendar month all payable in advance on the first day of each month.
- The PRT, at Clause 10, stated that the Applicant had lodged with the Respondent a deposit of £575. The parties were agreed this payment was made on 27 July 2018.

- The Respondent did not pay the deposit into an approved scheme as required in terms of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”).
- The PRT ended on 28 September 2020 when the Applicant vacated the Property
- The Applicant has not received any refund of his deposit.

The Case Management Discussion

At the CMD the Applicant stated:-

- That the reason the Applicant made the application was because he had wanted to be present whilst the outgoing inspection was being undertaken by the Respondent but he was busy moving his belongings and the inspection was carried out in his absence.
- That he is happy to pay for the broken ceiling light in the hall and the damage to the kitchen door but the Respondent would not deal with him.
- That he had been a loyal tenant and had no issues with Respondent until the end.
- That he did not want anything more from the Respondent than what he was entitled to receive.

At the CMD the Respondent’s representative stated:-

- That the Respondent’s address is 223 Stoneyhurst Street, Glasgow, G22 5PE.
- That the Property was advertised for let at a rent of £650 per calendar month but the Applicant asked the Respondent for a discount and she agreed to assist him move and the rent was therefore initially reduced to £575 per calendar month for 6 months.
- The style PRT used was provided by a friend.
- That this was the first time the Respondent had let a property and she was naïve.
- That it was accepted that the deposit was not paid into an approved scheme.
- That the Respondent did not know about the Regulations and when she became aware of them she thought they were optional not mandatory.
- That by then the 30 day period for lodging the deposit into an approved scheme had, in any event, passed.
- That the Respondent suffers from anxiety, was previously undergoing treatment and was not able to leave her home for several months.
- That the Respondent is not a bad person and she was not trying to act inappropriately.
- That there were damages to the Property and an agreement on these could not be reached amicably with the Applicant. The deposit was offset against them.
- That the Respondent would like to reach a compromise with the Applicant.
- That the Property has not since been rented out and a friend is presently staying in it.

- That they rent out no other properties.

Reasons for Decision

- The Tribunal takes a landlord's failure to comply with the Regulations very seriously.
- The Applicant's deposit was unprotected for the duration of the tenancy.
- The Applicant was deprived of the benefit of the adjudication process offered by an approved scheme at the end of a tenancy. Had the deposit been lodged in an approved scheme the parties could have utilised the adjudication process to determine and resolve the outstanding dispute that still exists relative to the repairs and damages alleged.
- The Tribunal is satisfied that the Respondent did not comply with Regulation 3 of the Regulations.
- The Respondent's failure to comply with the Regulations is a serious matter which requires to be marked accordingly. Ignorance is no excuse.
- The Tribunal took account of the fact that the Respondent had never previously leased out a property and thought the Regulations were optional.
- The Tribunal took account of the Respondent being naïve rather than wilful in her actions.
- The Tribunal therefore determined that the Respondent must pay to the Applicant a sum of £575 by way of a penalty for her failure to comply with the Regulations.

Decision

The Respondent is ordered to pay to the Applicant a sum of £575.00.

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.

Gillian Buchanan

Legal Member/Chair

16 December 2020