



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/21/0169

Re: Property at Brooklea, Millbrae, Currie, Edinburgh, EH14 6AD (“the Property”)

Parties:

Mr George Gibson-Macfarlane, 593 Lanark Road, Juniper Green, Edinburgh, EH14 5DA (“the Applicant”)

Dawnside Developments Ltd, Geddes House, Kirkton North, Livingstone, West Lothian, EH54 6GU (“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 be made against the Respondent in the sum of One Thousand Eight Hundred and Seventy Five Pounds (£1,875)

Introduction

This is an application under Rule 103, and Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Service of the proceedings and intimation of the Case Management Discussion (CMD) was effected upon the respondent on 18 February 2021.

The CMD took place on 23 March 2021 at 11.30am. The hearing was conducted by teleconference.

The applicant joined the hearing personally and represented his own interests. The respondent was represented by Mr Ally Donaldson, a Director of the respondent company.

Findings and Reasons

The property is Brooklea, Millbrae, Currie, Edinburgh EH14 6AD.

The applicant is Mr George Gibson-Macfarlane. He is the former tenant of the property. The respondent is Dawnside Developments Ltd, who is the former landlord.

The parties entered into a private residential tenancy which commenced on 1 February 2019. The applicant is one of two co-tenants. The other tenant was the applicant's husband Mr Alexander Gibson-Macfarlane. A deposit was paid in the sum of £1,250. The tenancy ended on 7 December 2020.

The applicant identified that the respondent failed to pay the tenancy deposit paid into an approved scheme timeously. The applicant has produced written evidence from SafeDeposits Scotland. This is an email stating that the deposit was received and paid into the scheme on 23 December 2020. This was 22 months after the tenancy commenced and was after the tenancy ended.

Regulation 3 of the 2011 Regulations requires that a landlord who has received a tenancy deposit must, within 30 working days of the beginning of the tenancy, pay the deposit into an approved scheme. On the basis of the documentary evidence, which is found to be credible and reliable, the Tribunal found that the respondent had failed in this duty. The respondent does not dispute this

The respondent had lodged a detailed written submission outlining the circumstances giving rise to the failure to comply with the regulations. It was caused by administrative error. The respondent is a commercial construction company which retains residential units and lets them on a professional basis. A change in personnel at the time of the let commencing led to confusion about whose responsibility it was to lodge the deposit.

Regulation 10 of the 2011 Regulations imposes upon the Tribunal a mandatory direction to impose a penalty upon a landlord who does not meet their tenancy deposit duties and obligations under the 2011 Regulations. The Tribunal must order that the relevant landlord pay to the tenant an amount not exceeding three times the amount of the tenancy deposit.

The Tribunal must weigh up all relevant factors regarding the facts and circumstances of the particular case to determine the appropriate and proportionate penalty to be imposed upon the landlord.

The respondent has fully cooperated with the Tribunal process providing a full and transparent explanation. The respondent is a registered landlord. The respondent lets out around 40 properties across Scotland. The respondent is fully aware of their obligations and has not breached the Regulations on any former occasion. An attempt

was made to protect the deposit by paying the sum to SafeDeposits Scotland but this only happened after the tenancy had ended. The full deposit was ultimately repaid in full.

In all of the circumstances, the Tribunal concluded that a fair and proportionate penalty to be imposed upon the respondent is the sum of £1,875 which represents one and a half times the deposit paid. This reinforces and underlines the serious nature of the respondent's failure to abide by the 2011 Regulations. It is essential that members of the public entering into tenancy contracts with landlords have the confidence that their deposits are adequately protected and that correspondingly adequate sanctions are imposed upon landlords who fail to adhere to the Regulations. The respondent is a commercial agent letting multiple properties and the standards expected of such an agent are high. The intention of the Regulations is to create a punitive regime for those who breach them. The respondent is a commercial company and the penalty imposed is proportionate. The level awarded recognises the innocent nature of the respondent's failures, which is accepted, and takes account of the fact that the sum ordered to be paid is akin to a windfall for the applicant.

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.

Richard Mill

23 March 2021

Legal Member/Chair

Date