



**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/21/0311

Re: Property at Hawthorn, Shannochie, Isle of Arran, KA27 8SJ (“the Property”)

Parties:

Ms Christine McKelvie, Hawthorn, Shannochie, Isle of Arran, KA27 8SJ (“the Applicant”)

Mr George Lammie, Torran, Montrose Terrace, Whiting Bay, Isle of Arran, KA27 8QW (“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 should be made against the Respondent in the sum of two hundred and fifty pounds (£250)

Introduction

This is an application under rule 103, and regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The applicant makes a claim for financial penalty to be imposed against the respondent, in her favour, in respect of the respondent’s failure to adhere to the regulations.

Service of the proceedings and intimation of the Case Management Discussion (CMD) was effected upon the respondent by Sheriff Officer delivery on 1 April 2021.

By way of letter dated 19 April 2021 the respondent’s solicitors lodged a letter with the Tribunal in which it is accepted that the tenancy deposit was not paid timeously in accordance with the regulations.

The CMD took place on 4 May 2021 at 2.00 pm. The hearing was conducted by teleconference.

The applicant joined the hearing personally. He was represented by Mr Alister Meek, advice and information officer from the Community Housing Advocacy Project (CHAP), Ardrossan. The respondent did not join the hearing but he was represented by Mr Sean Lynch of McCluskey Browne, solicitors.

Findings and Reasons

The property is Hawthorn, Shannochie, Isle of Arran KA27 8SJ.

The applicant is Ms Christine McKelvie. She is the now former tenant of the property. The respondent is Mr George Lammie, who is the landlord.

The parties entered into a private residential tenancy which commenced on 1 April 2020. The rent was stipulated at £450 per month rising to £650 per month from 1 July 2020. A deposit of £250 was paid.

A separate repairing standard application has been made to the Tribunal in respect of the condition of the property. This application is still pending.

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 a receipt stating that the deposit was received and paid into the scheme on 12 January 2021. This was some 9 months after the tenancy commenced. This documentary evidence is credible and reliable and the Tribunal attached weight to it.

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.

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. There is no discretion available to the Tribunal as to whether to impose a penalty or not. The regulations are directive.

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 respondent.

The respondent has cooperated with the Tribunal process. The respondent is a registered landlord. The deposit was ultimately paid to SafeDeposits Scotland but this only happened after a significant delay. No explanation or other mitigating circumstances have been advanced on behalf of the respondent other than the statement that he was unaware of the requirements of the regulations. The issue of the respondent's knowledge of the regulations was disputed by the applicant herself. Any ignorance of the regulations, of course, is no excuse and is to a significant extent irrelevant in any event. A strict liability policy has been legislated for.

In all of the circumstances, the Tribunal concluded that a fair and proportionate penalty to be imposed upon the respondent is the sum of £250 which represents the value of 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 intention of the Regulations is to create a punitive regime for those who breach them. The applicant, on the other hand, has not suffered any financial loss due to the respondent's failure. The penalty imposed amounts to a windfall for her.

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

Legal Member/Chair

4 May 2021

Date