



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under the Housing (Scotland) Act 2006 section 121 and Regulation 9 the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/21/0421

Re: Property at First Floor, 32 South Mount Street, Aberdeen, AB25 2TB (“the Property”)

Parties:

Mr Paulo Tiago Costa, Ms Monica Filomena, c/o Raeside Chisholm Solicitors, 8 Gordon Street, Glasgow, G1 3PL; c/o Raeside Chisolm Solicitors Ltd, 8 Gordon Street, Glasgow, G1 3PL (“the Applicants”)

Mr Alistair Cheung, 7 Newburgh Crescent, Aberdeen, AB22 8ST (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Landlord is in breach of her obligations in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“Regulation 3”). The Respondent shall make payment to the Applicant in the sum of FIVE HUNDRED POUNDS (£500) STIRLING

Background

1. The Tribunal received an application from the Applicant in terms of Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017 dated 22nd February 2021.
2. The Applicants advised in the application that the tenancy had commenced on 26th June 2020. The tenancy is a Private Rented Tenancy though a Short Assured Tenancy was signed. The Respondent did not place the deposit in any

scheme or provide details when asked regarding the placing of the deposit in any scheme.

3. The deposit paid was £500.

The Case Management Discussion (“CMD”)

4. A CMD was held on 22nd April 2021 at 10am by teleconferencing. The Applicants were represented by Mr David Doig, solicitor, Raeside Chisholm Solicitors. The Applicants did not attend. The Respondent was present and represented himself.
5. The Respondent admitted that he had not lodged a deposit in an approved scheme. The Applicants were his first tenants. He has one property and had not let it out before. The Applicants raised issues with Aberdeen City Council. This led to the Respondent being informed that he should have been a registered landlord which he was not. He required to have the appropriate certification for the Property. He actioned this as soon as he could. His landlord registration was through on 27th January 2021. He has had no further ramifications from Aberdeen City Council due to not registering as it was seen that he registered as soon as he became aware of it.
6. The Respondent was not able to lodge the deposit in an approved scheme until his landlord registration was complete. By the point it was complete the Applicants had left the Property. He repaid the proportion of the deposit that he felt that he should have paid taking into account the discount of £100 that the Applicants had told him to keep and the cost of the repairs to the Property this meant that £162 was returned to the Applicants on 11th January 2021. The amount of deposit returned is under dispute. The Applicants are considering their position with regard to lodging a further application with the Housing and Property Chamber regarding the return of the £228.
7. The Respondent is looking to instruct a letting agent in Aberdeen. He has identified the letting agent. The Property is currently empty. Due to this legal process he has felt that he did not wish to pursue the letting of the Property immediately.
8. The Respondent accepts that he should have been a registered landlord and should have placed the deposit in an approved scheme.
9. Mr Doig acknowledges the Respondent's admissions. His position remained that a penalty should be issued. He proposed a two times penalty given that the breach had occurred and that there had been substantial correspondence between parties without resolution. Quoting two Housing and Property Chamber cases where decisions had been made on this point. Mr Doig acknowledged that it would not have been reasonable for the Respondent to retain the deposit until he was a registered landlord in order that he could put it in a scheme as the Applicants had left the Property by that point.

10. The Tribunal considered that a one times penalty was appropriate given that the Respondent had accepted that the deposit was not lodged in an approved scheme within 30 days of the tenancy beginning. Further the Respondent has been in discussions with a letting agent to assist him to ensure that it will not happen again.
11. The Tribunal noted that although a Short Assured Tenancy agreement was signed this was done so erroneously instead of a Private Rented Tenancy. The tenancy agreement defaults to a Private Rented Tenancy.
12. Accordingly the Tribunal finds in fact:
- a. The Applicants paid a deposit of £500.
 - b. The start date of the tenancy was 26th June 2020 with an end date of 4th January 2020.
 - c. The deposit was not paid into an approved scheme.
 - d. The Respondent has since attempted to remedy future letting issues by registering as a landlord and has identified a letting agent to deal with future lettings.
 - e. The Respondent did not meet his duties in terms of Regulation 3.

Decision

13. The Respondent has a duty under Regulation 3 to place the deposit in an approved scheme within the specified time but failed to do so. The Respondent not been aware of his legal obligations when letting a property including being on the landlord register. Further not being on the landlord register prohibited him from lodging a deposit in the approved scheme. He has since completed his landlord registration and has identified a letting agent to deal with the Property in order that this does not occur again. The Tribunal decided that a fair, just and proportionate sanction would be to order the Respondent to pay the Applicant one times the amount of the deposit (£500).

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.


Gabrielle Miller
Legal Member/Chair

22nd April 2021
Date