



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

Chamber Ref: FTS/HPC/PR/21/0565

Re: Property at 2/2 8 Dunedin Terrace, Clydebank, G81 1NE (“the Property”)

Parties:

Mr David Holderness, 71 Braes Avenue, Whitecrook, Clydebank, G81 1DN (“the Applicant”)

Mr David Ward, 12 Village Gardens, Glasgow, G72 9PG (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member)

Decision

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

- **Background**

This is an application for an order for payment of a sanction for alleged non-compliance on the part of the Respondent with the duties of a landlord under the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) in relation to the Applicant’s private residential tenancy at the Property. It called for a case management discussion (‘CMD’) at 2pm on 21 May 2021, by teleconference. The Applicant phoned in to the conference in person. The Respondent did not phone in in person, but was represented by Ms Channelle Stewart of Clydebank Estate and Letting Agents.

- **Findings in Fact**

1. The Applicant had a private residential tenancy at the Property, commencing 28 February 2020.

2. In terms of the tenancy agreement, the Applicant paid a deposit to the Respondent's agents of £450, also on 28 February 2020.
3. The Respondent's agents paid that deposit to the scheme administrator of an approved scheme on 17 April 2020 (i.e. 32 working days after it was received).
4. There was no dispute between the parties in relation to the deposit arising during the period of two days the deposit should have been protected, but was not.
5. The Respondent's agents' failure to pay the deposit to a scheme administrator of an approved scheme within 30 working days of the commencement of the tenancy was due, in part, to disruption to normal working caused by the coronavirus pandemic.
6. The tenancy came to an end on 10 March 2021.
7. This application was made on 9 April 2021.
8. The Respondent has returned the deposit to the Applicant in full.
- Reasons for Decision
9. The breach of the Regulations in this case was in relation to the payment of the deposit into an approved scheme, which the Tribunal considers is the most important of the various duties they impose. It follows that a failure to comply must be treated as a serious matter.
10. Against that background, however, the deposit paid by the Applicant was unprotected for only two days beyond the time limit stipulated in the Regulations. He did not suffer any significant prejudice as a result.
11. In mitigation, the Respondent's agents (who took responsibility for the failure on his behalf) explained that their normal working practices were severely disrupted by the coronavirus pandemic during the period they held the deposit and that that resulted in the oversight that led to the deposit being paid two days after the deadline.
12. The Applicant suggested that, although the deposit was paid to a scheme only two days after the 30 day limit, that failure must be seen against the background of there having been a whole 30 days to comply prior to the deadline.
13. The Tribunal considers that that argument does not hold water. The sanction is for a failure to comply with the time limit in the Regulations. While it may be prudent to do so in plenty of time; in law, the Respondent is entitled to take as long as he wishes within that limit to make the payment. His failure therefore only relates to the two days following the expiry of the time limit.

14. On that basis, the brevity of the period in which the deposit was unprotected in this case and the lack of any appreciable prejudice to the Applicant as a result of it tend to suggest that a sanction at the lower end of the scale is appropriate. The Tribunal also considered that the impact of the pandemic did offer some mitigation on the part of the Respondent's agents, given that it constitutes an extraordinary set of circumstances that created unforeseeable difficulties in the transaction of all sorts of business.

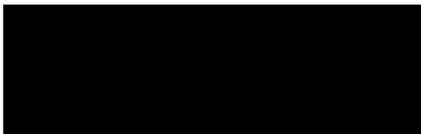
15. For those reasons, the Tribunal considered that a sanction of £200 was appropriate.

- Decision

Order made for payment by the Respondent to the Applicant of the amount of £200 (TWO HUNDRED POUNDS STERLING).

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.



Legal Member/Chair

21 May 2021

Date