Housing and Property Chamber
First-tier Tribunal for Scotland

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/21/1938

Re: Property at 10/9 Lochrin Place, Edinburgh, EH3 9QY ("the Property")

Parties:

Miss Eilidh Hutchison, Miss Hannah Priest, 55 Bonhill Road, Dumbarton, G82 2DR; 2 West Hill Avenue, Leeds, LS7 3QH ("the Applicants")

Broughton Properties Ltd, 14 Rutland Square, Edinburgh, EH1 2BD ("the Respondent")

Tribunal Members:

Valerie Bremner (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent should pay to the Applicants the sum of nine hundred pounds (£900) having found that the Respondent has breached the duties set out in Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Background

1. This is an application under Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations and Rule 103 of the tribunal rules of procedure in respect of an alleged failure to comply with the duties required of the landlord under Regulation three of the 2011 Regulations.
2. The application was first lodged with the Tribunal on 12 August 2021 and was accepted by the Tribunal on 10 September 2021.

Case Management Discussion

3. The application called for a case management discussion on 22 October 2021. Both of the Applicants Miss Hutchison and Miss Priest attended the case

management discussion. Mr Joseph Crolla Director of the Respondent company attended the case management discussion on their behalf.

4. At the case management discussion on 22 October 2021 the Tribunal had sight of the application, the tenancy agreement, a deposit protection certificate, emails between the parties and a screenshot of a text message from the Applicant Miss Hutchison to Mena Crolla, the Applicants' contact at the landlord Respondent, advising that the Applicants would be terminating the tenancy with effect from 19 September 2021.
5. The Tribunal raised the issue of the name of the landlord as set out in the tenancy agreement and the application. This was said to be ' Broughton properties' and the application named the Respondent in this way. Mr Crolla advised the Tribunal that this was an error in the tenancy and the landlord was Broughton Properties Ltd. He advised that the registered office for Broughton properties Ltd was 14 Rutland Square Edinburgh EH1 2BD and that the Respondent had received via that address the papers sent by the Tribunal for the Case Management Discussion.
6. The Tribunal chair requested to know if the Applicants wish to amend the name and address of the Respondent in the light of this information. Miss Hutchison on behalf of the Applicants moved to amend the name of the Respondent and the address on the application and there was no objection to this request by Mr Crolla. The Tribunal permitted the application to be amended in this way.
7. Mr Crolla advised the Tribunal at the start of the Case Management Discussion that the Respondent accepted that the duties in terms of Regulation 3 of the 2011 regulations had been breached. He explained that the deposit had been received from the Applicants in July 2020 and should have been placed in an approved deposit scheme within 30 working days. Due to the ongoing pandemic and Covid 19 restrictions the person who dealt with these matters within Broughton Properties Ltd was working one day per week and they were working from home. As a result due to an administrative oversight the deposit was not protected and the informed required as set out in Regulation 42 was not sent to the Applicants within the required time.
8. Mr Crolla advised the Tribunal that the company had conducted a review of its tenancies in May 2021 and had discovered the failure to lodge the deposit and had immediately sent an email to the Applicants dated 3rd May 2021 apologising for the failure to put the deposit into an approved scheme at the start of the tenancy and also enclosing a Regulation 42 document.The deposit had been protected within an approved scheme at this time. Mr Crolla explained to the Tribunal that the oversight had been found by the Respondent company and had not been prompted by any request or intimation of tribunal proceedings on the part of the Applicants. For the Applicants Miss Hutchison indicated that they had not rented property before and had not been aware of the requirements regarding tenancy deposits. They were students and had made it clear they were only going to stay in the property for approximately one year. While Miss Hutchison said she could not contradict the information that Mr Crolla had given to the Tribunal she said that she was unsure as to whether she believed it because of certain other things that had occurred during the tenancy. She indicated that she had been advised once tribunal proceedings were issued that the deposit paid by both of the Applicants would not be returned, although she understood that the time limit for return of the deposit scheme was 3rd November 2021.

9. Mr Crolla indicated that was not his information and it was the intention of the respondent Broughton Properties Ltd to return the deposit to the Applicants within the required timeframe.
10. Both parties were given an opportunity to address the tribunal on the amount of the sanction which required to be imposed in relation to the breach of duty. Miss Hutchison did not address the Tribunal as to any specific amount but pointed out that the deposit had been at risk and not paid into a deposit scheme for the majority of the tenancy and asked for a sanction that she said was fair in those circumstances.
11. On behalf of the Respondent Mr Crolla indicated that Broughton Properties Ltd was not a large property company and had around 12 properties. These were mainly commercial properties. He reiterated that this was an oversight due to the circumstances that prevailed at the time in relation to the pandemic and that this would not happen again. He pointed to the fact that the Respondents had picked up on the error themselves and had dealt with it immediately. He pointed out that the Respondents were not trying to withhold money until they were alerted but had rectified the oversight.

12. The Tribunal considered the terms of the 2011 Regulations and was satisfied that it had sufficient information to determine the matter at this stage and the procedure was fair.

13. The Tribunal found that the Respondent had breached the terms of Regulation three of the tenancy deposit scheme (Scotland) Regulations in that the tenancy deposit was paid into an approved scheme more than seven months after it should have been and the information required to be given to tenants in terms of Regulations 3 and 42 of the 2011 Regulations was late to the same extent.

Findings in Fact

14. The parties entered into a tenancy agreement at the property commencing on 27th July 2020.
15. The tenancy agreement ended with effect from 19 September 2021.
16. The tenancy was a relevant tenancy within the meaning of Regulation three of the 2011 Regulations.
17. The Applicants paid a total deposit of £1100 to the landlord Respondent around 23rd July 2020.
18. Due to an administrative oversight the deposit was not paid into an approved tenancy deposit scheme by the Respondent until 4th May 2021.
19. By email of 3 May 2021 the Respondent apologised to the Applicants for the failure to pay the deposit into an approved scheme and provided them with the information required to be given to tenants in respect of Regulations 3 and 42 of the 2011 regulations.
20. The Applicants received a deposit certificate from the approved tenancy deposit scheme confirming that the deposit had been paid into the scheme with effect from 4 May 2021.
21. As soon as the Respondents realised the oversight the deposit was paid into the scheme and the required information in terms of Regulations 3 and 42 was provided to the tenants.

22. The deposit paid by the Applicants is due to be returned to them by 3 November 2021.

Reasons for Decision

23. The tribunal having found that there was a breach of the Regulations, it then fell to the Tribunal to consider what sanction should be made in respect of the failure to protect the deposit and give the information required in terms of Regulation 3 of the 2011 Regulations within the required timeframe. The tribunal had regard to the case ***of Russell - Smith and others against Uchegbu [2016] SC EDIN 64***.In particular the tribunal considered what was a fair proportionate and just sanction in the circumstances of the case always having regard to the purpose of the Regulations of the gravity of the breach. Each case will depend on its own facts and in the end of the day the exercise by the Tribunal of its judicial discretion is a balancing exercise.
24. The Tribunal weighed all of the factors and found it to be of significance of the deposit had been unprotected for a period in excess of seven months after the expiry of the 30 working day limit for paying the deposit into a scheme. The Tribunal also noted that the provision of the letter giving information required terms of regulation 3 had not been sent until 3 May 2021. The tribunal also considered the fact that the Respondent had apologised to the tenants by e mail, rectified the error without being prompted to do so and admitted at the start of the case management discussion that there had been a breach of duty in terms of the failure to pay the deposit timeously into an approved deposit scheme and to give the required information in terms of Regulation 3. The Tribunal accepted the explanation for lateness given by Mr Crolla. The restrictions on the way business was operated during 2020 had clearly had an effect on the ability of the Respondent's business to function, since the member of staff responsible for this type of work was only working one day per week. While the tribunal accepted that this was not a deliberate failure on the part of the Respondent it did note however that the Respondent had been able to enter into a tenancy agreement with the Applicants in July 2020 and take a deposit from them and it should therefore have been part of that process to ensure that the deposit was protected and the required information was given to the Applicants within the appropriate time frame.
25. The Tribunal found that the breach of the Regulations having occurred by means of an error was at the lower end of the scale and having regard to the factors put forward by both parties and mitigating factors set out on behalf of the Respondent, determined that the sanction should be £900 in the particular facts and circumstances of the case.

Decision

The first-tier Tribunal for Scotland (Housing and property Chamber) (" the Tribunal") determined that the Respondent should pay to the Applicants the sum of £900 in total having found that the Respondent has breached the duties set out in Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011.

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: Valerie Bremner **Date: 22/10/2021**