



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/21/2092

Re: Property at 47 Larkfield Gate, Flat 02, Glasgow, G42 7BT (“the Property”)

Parties:

Mr Mark John Munn, 47 Larkfield Gate, Flat 02, Glasgow, G42 7BT (“the Applicant”)

Link Housing Association Ltd T/A Link2 Let, watling house callender business park, callender road, falkirk, FK1 1XR (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent is required to pay the sum of One Thousand and Thirty Five Pounds and Seventy Two Pence (£1,035.72) to the Applicant

Introduction

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

Service of the application and intimation of the Case Management Discussion (CMD) was effected upon the respondent by Sheriff Officers on 21 October 2021.

The CMD took place by teleconference on 25 November 2021 at 11.30 am.

The applicant represented his own interests. The respondent was represented by Mrs Lorna Dunsmore.

Findings and Reasons

The property is Flat 0/2, 47 Larkfield Gate, Glasgow G42 7BT.

The applicant is Mr Mark John Munn. He is the tenant. The respondent is Link Housing Association Ltd, trading as Link2Let.

The parties entered into a private residential tenancy which commenced on 31 May 2021. The monthly payments of rent were stipulated at £417.86 per month with a deposit required, in the sum of £517.86.

The applicant paid the deposit to the respondent on 28 October 2020, many months before the tenancy commenced. The deposit ought to have been paid into an approved scheme within 30 days of the tenancy commencing on 31 May 2021.

Evidence is produced that the applicant's deposit was not received by SafeDeposits Scotland until 23 July 2021. A deposit certificate has been produced from SafeDeposits Scotland which confirms this. The SafeDeposits Scotland DAN number is DAN637856. The Tribunal found this documentary evidence credible and reliable and attached weight to it.

The tenancy between the parties continues. The application has been made due to the obvious late lodging of the deposit which was confirmed by the deposit scheme administrator to the applicant.

The late lodging of the deposit was openly accepted on behalf of the respondent. Sincere apologies were noted on behalf of the respondent. It was explained that the late lodging was an administrative oversight occasioned by a change in the procedures used by the finance service team. The respondent is well aware of its duties to protect the deposits of tenants. The deposit was paid into the approved scheme as soon as the failure had come to light.

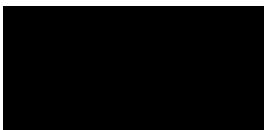
The Tribunal was satisfied that the respondent has not complied with the requirements of the 2011 Regulations and in particular has not paid the deposit into an approved scheme timeously. The duties of landlords are contained within Regulation 3. This requires a landlord who has received a tenancy deposit to pay the deposit to a relevant scheme administrator from an approved scheme within 30 working days of the beginning of the tenancy. The respondent failed to do this.

The Tribunal was therefore satisfied that the respondent failed to comply with the duty in Regulation 3. Regulation 10 requires the Tribunal to make an Order against the respondent to pay to the applicant an amount not exceeding three times the amount of the tenancy deposit.

The Tribunal considered all relevant circumstances prior to making any Order under Regulation 10. The respondent is operating as a major mainstream commercial letting agent. The circumstances by which the deposit was paid into the approved scheme late are relevant and are taken fully into account. There was no malice. The applicant has not suffered any financial loss though has been inconvenienced. The Regulations set down a regime with strict liability. The respondent's procedures ought to have identified the deposit had been paid. The public require to have confidence that residential landlords and their agents are operating fairly and that their deposits are secured in accordance with the law in force in Scotland. Given the mitigating factors and the fact that the applicant has suffered no loss the Tribunal ordered that the respondent pay to the applicant the sum of twice the amount of the tenancy deposit in the sum of £517.86. This is a total of £1,035.72. This is fair and proportionate in all of the circumstances of this case.

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

25 November 2021

Date