



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/21/2331

Re: Property at 0/1 27 McLennan street, Mount Florida, Glasgow, G42 9DH (“the Property”)

Parties:

Mr Calum Macnab, Mrs Gisela Martinez Miranda, 0/1 27 McLennan street, Mount Florida, Glasgow, G42 9DH (“the Applicants”)

Mrs Zarina Begum, 34 Barrhead Road, Newton Mearns, Glasgow, G77 6BD (“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 as a sanction for an alleged breach of a landlord’s duties in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (‘the Regulations’). It called for a case management discussion (‘CMD’) at 10am on 16 February 2022, by teleconference. The Applicants were on the call in person. The Respondent was on the call in person and was represented by her son, Mohammed Yousef.

- Findings in Fact

The facts of the case were not in dispute.

1. The Applicants let the Property from the Respondent in terms of a private residential tenancy, with a start date of 10 January 2018.
2. That tenancy was formed on the basis of a written agreement which purported to be for a short assured tenancy.
3. In terms of the agreement, on 9 January 2018, a deposit of £450 was paid to the Respondent's agent by the Applicants.
4. The Respondent's agent did not pay the deposit into an assured scheme within 30 working days of the beginning of the tenancy.
5. Without having sought to terminate the tenancy and reclaim the deposit, the Applicants discovered this failure in the summer of 2021.
6. On 3 September 2021, shortly after the failure was brought to the attention of the landlord's agent, she paid the deposit into an approved scheme, where it remains.
7. The Respondent was not aware of her agent's failure until it was raised by the Applicants.
8. The Respondent lets one other property.

- Reasons for Decision

9. The Regulations require that an order for sanction be made by the Tribunal, where it finds that a breach of the landlord's duties under regulation 3 has

occurred. Of the various duties set out in that regulation, the one to pay the deposit into an approved scheme within 30 days is the most important, so the failure in this case is serious one. That that failure was on the part of the landlord's agent does not act as mitigation. Just as a landlord may rely on their agent's correct action to justify their position, so they must take responsibility for their agent's wrongdoing.

10. It is of further concern that the tenancy in this case was not correctly set out as a private residential tenancy from the outset. This tends to suggest a general lack of attention to the legal requirements around the formation of a tenancy, which are of great importance. Tenants, who will generally not have the benefit of legal advice, or who may not be in position to insist on their rights at the outset of a tenancy, must not be misled into believing that their rights are different from what they are in law, or that the proper steps have been taken when they have not.
 11. In this case, the deposit was not protected as it should have been for a period of close to three and a half years. That is a very long period. However, it must also be observed that the overall prejudice to the Applicants in this case has not been great. They have not wanted to terminate their tenancy and recover the deposit at any point. Once the issue was raised, the Respondent's agent placed the deposit in an approved scheme very quickly, rectifying the position. The Respondent's lack of attention to the legal requirements has not had a significant effect on the wider community either, since she only lets out one other premises.
 12. Taking these factors into account, the Tribunal determined that a fair level of sanction in this case would be at the middle of the scale, or one and half times the deposit (£675).
- Decision

Order made for payment by the Respondent to the Applicants of the sum of £675 (SIX HUNDRED AND SEVENTY-FIVE 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.

N Young

16 February 2022

Legal Member/Chair

Date