



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section under regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/21/2497

Re: Property at Right flat 2c Channel Street, Galashiels, TD1 1BA (“the Property”)

Parties:

Rachael Neillie, residing at 295 Golfhill Drive, Flat 2/1, Glasgow, G31 2NZ (“the Applicant”)

And

David Philip, residing at 22 Oakbank Avenue, East Calder, Livingston, EH53 0Ot (“the Respondent”)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has breached his obligations under regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Background

1. On 12 April 2021 the respondent let the property at Right flat 2c Channel Street, Galashiels, TD1 1BA (“the property”) to the applicant and her mother. A Tenancy agreement was entered into which required payment of a deposit of £600. The tenancy ended on 16 August 2021.

The Case Management Discussion

2. A Case Management Discussion took place before the Tribunal by telephone conference at 2.00pm on 2 December 2021. The Applicant was present and unrepresented. The respondent was present and was represented by Mr W. Dodd of MASK property Management Ltd

3. The respondent's position is that he relied entirely on his then letting agents, Edwin Thompson LLP. He only discovered that the applicant's deposit was lodged with an approved scheme outwith the 30 day period allowed when he received the applicants application. The respondent accepts that a payment order must be made.

4. Both parties agree that the applicant paid a deposit of £600 on 12 April 2021 to the respondent's letting agents, but that the letting agents (Edwin Thompson LLP) did not pay the deposit into an approved tenancy deposit scheme within 30 days of commencement of the tenancy. The deposit was only paid to Safe Deposit Scotland on 26 June 2021, when it should have been placed with an approved tenancy deposit scheme not later than 11 May 2021.

5. Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 tells me that, in light of the admitted facts, I must make a payment order against the respondent. I can dispose of this case today, without the need for a further hearing.

Findings in Fact

6. On 12 April 2021 the respondent let the property at Right flat 2c Channel Street, Galashiels, TD1 1BA ("the property") to the applicant and her mother. A Tenancy agreement was entered into which required payment of a deposit of £600. The tenancy ended on 16 August 2021.

7. The respondent relied on his then letting agents. The applicant paid a deposit of £600 to the respondent's letting agents on 12 April 2021. The Respondent has never held the deposit funds. The deposit funds rested in the account of Edwin Thompson LLP (the respondent's former letting agents) between 12 April 2021 and 26 June 2021.

8. Edwin Thompson LLP discovered that, because of various administrative errors, they had not paid the deposit funds into an approved tenancy deposit scheme on 21 June 2021. The next day they started to arrange to transfer the funds to Safe Deposit Scotland. The transfer of funds was completed on 26 June 2021.

9. In a letter dated 15 November 2021, Edwin Thompson LLP accept responsibility for failing to pay the deposit funds into an approved tenancy deposit scheme timeously.

10. After the tenancy ended, the deposit funds were returned to the applicant. It was only after the tenancy ended that the applicant discovered that deposit funds had been unprotected between 11 May 2021 and 26 June 2021.

11. It was only when the respondent received intimation of this application that he found out that that deposit funds had been unprotected between 11 May 2021 and 26 June 2021.

Reasons for Decision

12. It is beyond dispute that a deposit of £600 was paid at the commencement of the tenancy. On the facts as I find them to be, the deposit was not paid into an approved

scheme when it should have been, and rested for 45 days too long in the respondent's letting agent's account.

13. Even though the respondent was unaware of the mistakes made by his former letting agent, he accepts responsibility for their error. A full accounting for the deposit has been made. Against those mitigating factors I must balance the undisputed fact that the deposit was unprotected for 45 days too long.

14. The Applicant asked me to make a payment order. The purpose of the order is not to enrich the applicant. The purpose of the order is to punish the respondent; to mark society's displeasure; to protect society and to ensure the enforcement of the 2011 Regulations in the future.

15. The real problem for the respondent is that he knew nothing of the error made by his letting agent until after the tenancy ended.

16. The amount of deposit was £600.00. That deposit was unprotected until 26 June 2021, when it should have been protected from 11 May 2021 at the latest. The fault lies entirely with Edwin Thompson LLP. Thankfully, the applicant suffered no loss.

17. A payment order in the sum of £100.00 reflects the seriousness of the breach of the 2011 Regulations.

18. The appropriate level of payment order is £100.00

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant of One Hundred pounds (£100.00) within 14 days of service of this order.

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.

Paul Doyle

Legal Member

2 December 2021