



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: Reference number: FTS/HPC/RP/21/2744

Property: 1F2, 17 Blackwood Crescent, Edinburgh, EH9 1RA (“The property”)

Parties:

Zeyu Cheng, residing at 92 Harvesters Way, Edinburgh, EH14 3JJ (“the Applicant”)

And

Cuma Cirkin, residing at 60 Hay Drive, Edinburgh, EH16 4AL (“the Respondent”)

Tribunal Members:

Paul Doyle (Legal Member)

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 8 July 2021 the respondent let to the applicant the property at 17/2 Blackwood Crescent, Edinburgh. A Tenancy agreement was entered into which required payment of a deposit of £800. The tenancy ended on 12/09/2021 when the applicant moved out of the property to allow the landlord to refurbish the property. The applicant believed he was temporarily decanted from the property, and that the tenancy would resume on 12/10/2021, but the relationship between the parties broke down and the tenant was unable to return to the property.

The Case Management Discussion

2. A Case Management Discussion took place before the Tribunal by telephone conference at 10.00am on 9 February 2022. The Applicant was neither present nor represented. The respondent was represented by Ms C Teven, trainee solicitor, of Jones Whyte LLP. In an email 8 February 2022 the respondent admits that he did not place the tenants deposit in an approved tenancy deposit scheme.

3. The appellant's position is set out fully in his written application. The appellant emailed his response to the respondent's solicitors email dated 8 February 2022 on 8 February 2022.

4. The respondent's position is that English is not his first language, so he relied on a letting agency. Although the respondent's letting agent took a deposit from the applicant, the respondent knew nothing of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("The 2011 Regulations"). The deposit has not yet been returned to the applicant.

5. Both parties agree that the deposit was not lodged with an approved tenancy deposit scheme within 30 days of commencement of the tenancy. Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 tells me that, in light of that admitted fact, 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 8 July 2021 the respondent let to the applicant the property at 17/2 Blackwood Crescent, Edinburgh. A Tenancy agreement was entered into which required payment of a deposit of £800. The tenancy ended on 12/09/2021. The tenancy agreement narrated that the deposit would be paid into an approved tenancy deposit scheme in accordance with the 2011 Regulations. The respondent had the advice of letting agents at the time the tenancy agreement was entered into.

7. Before taking entry the Applicant paid a deposit payment of £800 to the respondent. That deposit has not been paid the deposit into an approved tenancy deposit scheme. The tenancy ended five months ago. Since then, the applicant has made repeated requests for repayment of the deposit. The deposit has still not been repaid.

8. The respondent ignored the terms of the lease he signed as landlord which (correctly) narrated that the deposit would be placed in an approved scheme. This is not the only property that the respondent rents out. He has a number of rental properties.

Reasons for Decision

9. It is beyond dispute that a deposit of £800 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 has still not been repaid to the applicant.

10. The fact that English is not the respondent's first language is irrelevant. The respondent's solicitor told me that the respondent owns a number of properties from which he derives a rental income. The respondent has chosen to set up a business as a landlord, so that he can enjoy rental income. The respondent had the benefit of advice from a letting agency. The respondent has been able to instruct solicitors for these proceedings.

11. I have to weigh the aggravating factors against the mitigating factors. The aggravating factors are

- (i) the respondent has more than one rental property and operates a business as a landlord;
- (ii) the respondent has had control of the deposit since July 2021;
- (iii) the deposit has still not been repaid, and
- (iv) the respondent says that he knows nothing of the 2011 Regulations.

12. The only mitigating factors are that the respondent now acknowledges his error & the respondent has no history of breaches of the 2011 Regulations. Against those mitigating factors I must balance the undisputed fact that the deposit remains unprotected.

13. 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.

14. The amount of deposit was £800.00. For many months the deposit has been unprotected. A payment order equivalent to twice the value of the deposit reflects the seriousness of the breach of the 2011 Regulations.

15. The appropriate level of payment order for breaching the 2011 Regulations is £1600.00.

16. On the facts as I find them to be, the deposit has still not been repaid. I add the amount of the deposit due to the appellant to the payment order for breaching the 2011 Regulations, so that the payment order will total £2,400.00.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant of Two Thousand Four Hundred pounds (£2,400.00) 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.

Legal Member: Paul Doyle

Date: 9th February 2022