



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 3 &10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/21/2951

Re: Property at 73 School Road, Sandford, ML10 6BF (“the Property”)

Parties:

Mr Mark Branney, Mrs Julie Branney, 73 School Road, Sandford, ML10 6BF (“the Applicants”)

Carlton Country Ltd, 23 Melville Street, Edinburgh, EH3 7PE (“the Respondent”)

Tribunal Members:

Susan Christie (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for payment by the Respondent to the Applicants in the sum of £ 2,000 be granted.

Background

1. The Applicants applied for an Order for an award following on from a failure to lodge a deposit in an approved scheme timeously in line with regulations 3 &10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The application was accepted by the tribunal on 17 December 2021.
2. The paperwork was served on the Respondent at a business address on 19 January 2022.
3. Written representations were due by 8 February 2022. None were submitted.

The Case Management Discussion (CMD)- 23 February 2022 at 11.30am

4. Mr Branney participated, representing himself and Mrs Branney. Ms Fridley, a Property Management Consultant with the Respondent, represented the Respondent.

5. The detail of the application was discussed with the Parties along with the paperwork produced.
6. It was undisputed that:
 - (a) A private residential tenancy between the Parties over the Property commenced around 16 December 2020 which was also the date of entry.
 - (b) A deposit was taken of £1750 around the start date for the tenancy paid with the first rental payment of £1250.
 - (c) The Property Store was engaged as an agent for the Respondent and its style tenancy agreement was used.
 - (d) The Property Store had remitted the full sum paid including the tenancy deposit to the Respondent around 19 December 2020.
 - (e) The tenancy deposit of the Applicants was not paid into an approved scheme until around 24 September 2021. It was protected from that date.
 - (f) Prior to 24 September 2021 the tenancy deposit was unprotected and instead lay in the rent account held by the Respondent's accounts section.
 - (g) On receiving intimation of the deposit being protected late, the Applicants had contacted the Respondent to obtain an explanation, around October 2021.
 - (h) The private residential tenancy over the Property is current.
 - (i) The Respondent's had a development comprising several properties in the same street, of which the Property formed part. Only 3 properties are now in the ownership of the Respondent's as 'let out'.
7. The Applicants were aggrieved that the Respondent being in the business that they were with several properties in the same development and having an experienced agent had made the error that they did. When the mistake came to light, they had made their own enquiries and established that their deposit was unprotected for a period. It was not clear to them what had gone wrong, and it was not explained to them.
8. The Respondent's representative stated that this error had shown itself in an audit when they were looking through things for another account. They thought they didn't have the deposit as it had been combined in the rent account with the first rent payment. Therefore, the whole amount was allocated to the rent account for the Property. They had also thought that their agent would be responsible for putting the deposit payment into an approved scheme (as they had done this previously in another instance) but that turned out to not be the case. They were not trying to hide anything, and the amount had been in the rent account until it was paid into the approved scheme. When they became aware of the error it had been rectified. Systems had now been put into place and staff had been alerted, so that this would not happen again.

Findings in Fact

- I. A private residential tenancy between the Parties over the Property commenced around 16 December 2020 which was also the date of entry.

- II. A deposit was taken of £1750 around the start date for the tenancy along with the first rental payment of £1250.
- III. The Property Store had remitted the full sum paid including the tenancy deposit to the Respondent around 19 December 2020.
- IV. The tenancy deposit of the Applicants was not paid into an approved scheme until around 24 September 2021. It was protected from that date.
- V. Prior to 24 September 2021 the tenancy deposit was unprotected and instead lay in the rent account held by the Respondent's accounts section.
- VI. On receiving intimation of the deposit being protected late, the Applicants had contacted the Respondent to obtain information around October 2021.
- VII. The Respondent being the landlord did not comply with Regulation 3 of the Regulations and is in breach of the Regulations.
- VIII. The Respondent is required to pay the Applicant a sum of money and the Tribunal must make an Order to that effect by regulation 10.
- IX. The Respondent is ordered to pay the Applicant the sum of £2,000.

Reasons for Decision & Decision

The extract of regulations relied upon are noted below. The Regulations came into force on 7 March 2011.

The Application is well founded. A deposit was clearly paid at the outset of the tenancy and not deposited in an approved scheme. The purpose of Regulation 10 is to impose a *sanction* on the landlord for the failure and non-compliance with the statutory scheme. The deposit was exposed to risk whilst it remained the Respondent's business accounting systems. I note that it was paid into an approved scheme once the error came to light when checking another potential accounting issue. The Respondent knew about the legal obligations, but insufficient attention to the actual role of The Property Store in the business arrangements and lack of knowledge of those involved allowed this deposit not to be placed in an approved scheme timeously. When the error had been noticed, rectified, and then raised by the Applicants with the Respondent, it was not fully explained to them at that time what had gone wrong. The Respondent then had to carry out enquiries to find out what had happened. It was clear that sufficient robust systems were not in place to identify then lodge this deposit in an approved scheme timeously. I had regard to the Respondent's submission that proper internal arrangements had now been put in place to avoid this happening again. They only now held 3 properties in the development for rental. In the circumstances of this Application and having regard to all material before me, I order the Respondent pay to the Applicant £2,000. I considered that this is an appropriate amount, exercising my discretion. I could have imposed a higher sum to an amount not exceeding three times the amount of the tenancy deposit, but I considered the sum specified to be appropriate given the information before me and the limited mitigation.

Extract from the Regulations

3.—

(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—

- (a) pay the deposit to the scheme administrator of an approved scheme; and*
- (b) provide the tenant with the information required under regulation 42.*

[
(1A) Paragraph (1) does not apply—
(a) where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and
(b) the full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord,
within 30 working days of the beginning of the tenancy.

]1
(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

[
(2A) Where the landlord and the tenant agree that the tenancy deposit is to be paid in instalments, paragraphs (1) and (2) apply as if—
(a) the references to deposit were to each instalment of the deposit, and
(b) the reference to the beginning of the tenancy were to the date when any instalment of the deposit is received by the landlord.

]2
(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—
(a) in respect of which the landlord is a relevant person; and
(b) by virtue of which a house is occupied by an unconnected person, unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.

9.—

(1) A tenant who has paid a tenancy deposit may apply to the [First-tier Tribunal]1 for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made [...]2 no later than 3 months after the tenancy has ended.

10.-

If satisfied that the landlord did not comply with any duty in regulation 3 the [First-tier Tribunal]1 —

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(b) may, as the [First-tier Tribunal]1 considers appropriate in the circumstances of the application, order the landlord to—

(i) pay the tenancy deposit to an approved scheme; or

(ii) provide the tenant with the information required under regulation 42.

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.

S. C

Legal Member: Susan Christie

Date: 23rd February 2022