



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

Chamber Ref: FTS/HPC/PR/21/3240

Re: Property at Flat 7, 19 Glengate, Kirriemuir, DD8 4HD (“the Property”)

Parties:

Mr Graham Bell, 17 Lindsay Street, Kirriemuir, DD8 5DN (“the Applicant”)

PJ Redford Homes Ltd, 2 West Grange, The Steading, Errol, Perthshire, PH11 7SY (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent to the Applicant in the sum of £350.00.

Background

1. By application dated 12 December 2021 the Applicant complained to the Housing and Property Chamber that the Respondent was in breach of Regulation 3 of the Tenancy Deposits Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) as it had not lodged his deposit paid at the commencement of his tenancy of the property in an approved tenancy deposit scheme. The Applicant submitted a copy of the tenancy agreement, copy emails, and proof of payment of the deposit in support of the application.
2. By Notice of Acceptance dated 18 January 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. By email dated 17 March 2022 a Director of the Respondent Mrs Lorna Redford submitted written representations on behalf of the Respondent.

The Case Management Discussion

4. A CMD was held by teleconference on 25 March 2022. The Applicant did not attend nor was he represented. The Respondent was represented by Mrs Lorna Redford, supported by Mr Mark Robertson. The Tribunal determined to proceed with the CMD in the Applicant's absence on the basis that he had been informed of the date and time of the CMD and the Tribunal had his written submissions.
5. The Tribunal confirmed with Mrs Redford that: -
 - (i) The parties entered into a Private Residential Tenancy Agreement that commenced on 21 May 2021.
 - (ii) The rent was £425.00 per calendar month.
 - (iii) The Applicant paid a deposit of £425.00.
 - (iv) The deposit was never lodged in an approved tenancy deposit scheme throughout the tenancy.
 - (v) The tenancy ended on 5 January 2022.
 - (vi) The deposit was repaid in full to the Applicant on 7 February 2022.
 - (vii) The Applicant first raised the failure to lodge the deposit in an approved scheme in an email to the Respondent dated 31 August 2021.
 - (viii) Between that date and the end of the tenancy the Respondent failed to resolve the issue and lodge the deposit in an approved scheme.
6. For the Respondent Mrs Redford explained that the deposit had not been paid to Safe Deposits Scotland but that she had thought it had. She went on to say that she had tried to change the name from the previous tenant at the property but had been unable to do so as the deposit had never been paid into the property account. She said it had been during a period of lockdown and she had not found Safe Deposits very helpful. She said she had asked a colleague to assist but they had been unable to help. The problem had been because the funds had never been transferred to Safe Deposits and this had not been noticed. The funds had remained in the Company's bank account.
7. In response to a query from the Tribunal Mrs Redford advised that the Respondent owned 9 let properties in Scotland and a further 9 in Germany. She said the Respondent had owned the German properties for 13 years and the Scottish properties for 8 years.
8. Mrs Redford explained that the failure to lodge the deposit had been a massive oversight on her part and there had been a string of mistakes but there had not been a wilful disregard of the regulations. She went on to say that the properties were leased effectively as social housing and she had helped many troubled people in the past and was not some shark making a fortune. She said she also ran a charity for people with mental health problems.

Findings in Fact and Law

9. The parties entered into a Private Residential Tenancy that commenced on 21 May 2021 and ended on 5 January 2022.

10. The rent was £425.00 per month.
11. The Applicant paid a deposit of £425.00.
12. The Respondent failed to lodge the deposit in an approved Tenancy Deposit Scheme in accordance with Regulation 3 of the 2011 Regulations.
13. The Respondent was aware of the failure with effect from at least 31 August 2021.
14. The Respondent attempted to change the name of the tenant at the property to that of the Applicant but was unable to do so as the deposit was not transferred to Safe Deposits Scotland.
15. The Respondent is a professional landlord with nine let properties in Scotland.
16. The deposit was not secured throughout the duration of the tenancy.
17. The application is timeous in terms of Regulation 9 of the 2011 Regulations.
18. The Respondent repaid the deposit to the Applicant in full on 7 February 2022.

Reasons for Decision

19. The Tribunal was satisfied that the application was timeous as it was made within three months of the end of the tenancy. Mrs Redford accepted that the deposit had not been paid into an approved tenancy deposit scheme throughout the duration of the tenancy and that the Respondent was therefore in breach of Regulation 3 of the 2011 Regulations.
20. In terms of Regulation 10 of the Regulations it is stated:-

"If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal - (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit;"

Having admitted a breach of the Regulations the Tribunal is obliged to make an order against the Respondent.

In determining the amount payable by the Respondent to the Applicant the Tribunal took into account the following:-

- i. That the Respondent is a commercial landlord operating a substantial portfolio of rented properties over many years.
- ii. That the Respondent did not wilfully retain the deposit or deliberately breach the 2011 regulations.
- iii. That the Respondent over a period of several months ought to have realised that the deposit had not been transferred to Safe Deposits

Scotland and that was the reason for being unable to change the tenant's name at Safe Deposits Scotland.

- iv. That the Respondent repaid the deposit in full to the Applicant.
- v. That the tenancy was of reasonably short duration.

21. In the case of *Tenzin v Russell* 2015 Hous. L. R. 11, an Extra Division of the Inner House of the Court of Session confirmed that the amount of any award in respect of regulation 10(a) of the 2011 Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case. Taking everything into account the Tribunal was satisfied that a fair proportionate and just sanction was one at the lower end of the scale and determined that the Applicant was entitled to an order for payment in the sum of £350.00.

Decision

22. The Tribunal having carefully considered the information before it and being of the view that it had sufficient information to allow it to make a decision without the need for a hearing determined that the Applicant was entitled to an order for payment by the Respondent to the Applicant in the sum of £350.00.

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: Graham Harding

Date: 28 March 2022