



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/22/0179

Re: Property at 8 Limekilns Road, Longniddry, East Lothian, EH32 0FU (“the Property”)

Parties:

Mr Thomas Baille, 8 Limekilns Road, Longniddry, East Lothian, EH32 0FU (“the Applicant”)

Lowther Homes Limited, Wheatley Group, 25 Cochrane Street, Glasgow, G1 1HL (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted against the Respondent and in favour of the Applicant in the sum of £1,545.

Background

1. By application received in the period between 21st January and 1st February 2022 and made under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”), the Applicant applied for an order in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”). The Applicant lodged a copy of the tenancy agreement between the parties, and copy deposit certificate from Safe Deposits Scotland.
2. The application and notification of a Case Management Discussion was served upon the Respondent by Sheriff Officers on 1st March 2022.

The Case Management Discussion

3. A Case Management Discussion (“CMD”) took place by telephone conference on 14th April 2022. The Applicant was in attendance. The Respondent was not in attendance.
4. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the CMD and that the requirements of Rule 17(2) had been satisfied and it was appropriate to proceed with the application in the absence of the Respondent.
5. The Applicant said the tenancy commenced on 4th November 2021. He paid a tenancy deposit of £1030 to the Respondent. He received a deposit certificate from Safe Deposits Scotland indicating that the deposit was not lodged until 14th January 2022. The Applicant said he was concerned that a large sum of money was unprotected for around six weeks. At no time did the Respondent correspond with him regarding this matter.
6. The Applicant said he has had considerable problems since moving into the Property, which was a new build. He has notified the Respondent several times about snagging issues and has been ‘passed from pillar to post’, with some issues only recently being addressed. He has been given contradictory information by different people, and has had to buy items for the Property himself that ought to have been included. It is a lovely property but he is looking for alternative accommodation because he feels the Respondent does not care about their tenants. He said he was forced to threaten to withhold rent at one stage. Following difficulties with his payment card, he was late with a rent payment, and the Respondent was very quick to chase him up for the late payment.
7. Responding to questions from the Tribunal as to the amount of award to be made, the Applicant said he was content to leave that to the discretion of the Tribunal.

Findings in Fact and Law

8.
 - (i) The parties entered into a tenancy agreement in respect of the Property that commenced on 4th November 2021 and is ongoing.
 - (ii) A tenancy deposit of £1030 was paid to the Respondent by the Applicant at the commencement of the tenancy.
 - (iii) The deposit was not lodged with an approved tenancy deposit scheme until 14th January 2022.
 - (iv) The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.

Reasons for Decision

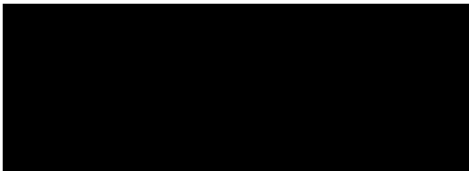
9. The Applicant's deposit was not lodged with an approved tenancy deposit scheme within 30 days of the commencement of the tenancy as required by Regulation 3. The deposit remained unprotected for a period of around six weeks.
10. The Regulations were put in place to ensure compliance with the tenancy deposit scheme, and to provide the benefit of dispute resolution for parties. The Tribunal considers that its discretion in making an award requires to be exercised in the manner set out in the case *Jenson v Fappiano (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015)* by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case. The Tribunal must consider the facts of each case appropriately.
11. The Tribunal took guidance from the decision of the Upper Tribunal UTS/AP/19/0020 which states: '*Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals.*'
12. The Tribunal considered this to be a serious matter, although not one at the most serious end of the scale. A large sum was paid by the Applicant to the Respondent. The tenancy agreement provided that the deposit would be lodged timeously with an approved tenancy deposit scheme. The Applicant was entitled to have confidence that the Respondent would comply with its duties as a landlord.
13. The tenancy agreement indicates that the Respondent is registered as a landlord in several local authority areas. It would appear to be a large organisation which is part of a larger organisation specialising in property related business, and an experienced landlord who cannot fail to be aware of their responsibilities in terms of the Regulations. At no time did the Respondent admit to the breach or apologise to the Applicant. No mitigation was put forward on behalf of the Respondent and there was no appearance at the CMD.
14. Taking all the circumstances into account, the Tribunal decided it would be fair and just to award a sum of £1,545 to the Applicant, which is one and a half times the tenancy deposit.

Decision

15. The Tribunal grants an order against the Respondent for payment to the Applicant of the sum of £1,545 in terms of Regulation 10(a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

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/Chair

14th April 2022

Date