



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/22/1247

Re: Property at 14/8 Dean Park Street, Edinburgh, EH4 1JP (“the Property”)

Parties:

Miss Maya Toney, 14/8 Dean Park Street, Edinburgh, EH4 1JP (“the Applicant”)

Ms Rachel Lawson, 64 Ashdon Road, Saffron Waldon CB10 2AL (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined (1) that the Applicant was entitled to an order for payment by the Respondent to the Applicant in the sum of £450.00 and (2) ordered that the Respondent provide the Applicant with the information required under Regulation 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Background

1. By application dated 30 April 2022 the Applicant applied to the Tribunal for an order under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicant submitted a copy of a tenancy agreement together with a Deposit Protection Certificate issued by Safe Deposits Scotland in support of her application.
2. By Notice of Acceptance dated 17 May 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 20 June 2022 the Respondent’s representatives ESPC Lettings, Edinburgh, submitted written representations to the Tribunal.

4. A CMD was held by teleconference on 25 July 2022. The Applicant attended in person. The Respondent did not attend nor was she represented. The Tribunal continued the CMD to a further CMD and issued Directions to the Applicant and the Respondent's representatives.
5. By email dated 27 July 2022 the Respondent's representative Ms Nicky Lloyd of ESPC Lettings advised the Tribunal that she had been unable to attend the previous CMD as she had been out of the country and also provided the Tribunal with the Respondent's home address.
6. By email dated 28 July 2022 the Applicant provided the Tribunal with written confirmation from her co-tenant Mr Matt Robertson that he was in agreement that the application should proceed in the Applicant's sole name but representing them both.

The Case Management Discussion

7. A CMD was held by teleconference on 27 September 2022. The Applicant attended in person. The Respondent did not attend but was represented by Ms Lloyd from the Respondent's representatives, ESPC Lettings, Edinburgh. By way of a preliminary matter the Tribunal amended the address of the Respondent to her home address of 64 Ashdon Road, Saffron Waldron CB10 2AL.
8. The Tribunal obtained confirmation from both the Applicant and Ms Lloyd that it was agreed that the Applicant and Mr Matt Robertson entered into a Private Residential Tenancy agreement with the Respondent that commenced on 9 August 2021 at a rent of £775.00 per calendar month. It was also agreed that a deposit of £975.00 was paid on 9 August 2021 but not lodged with Safe Deposits Scotland until 28 September 2021. The deposit was therefore 7 working days late in being lodged in an approved tenancy deposit scheme.
9. The Tribunal queried whether in light of Ms Lloyd's email of 20 June 2022 there had been any settlement discussions between herself and the Applicant. Ms Lloyd explained there had not as she had been looking for some guidance from the Tribunal in this regard before contacting the Applicant.
10. The Tribunal noted from the application that the Applicant was seeking the maximum award of three times the deposit and queried with the Applicant if that was realistic given that the deposit had been lodged only seven working days late. The Applicant indicated she did not know what a realistic award might be. She went on to say that she had only received intimation from Safe Deposits Scotland that the deposit had been lodged late and had received nothing at all from the Respondent's agents.
11. In discussion with Ms Lloyd, it transpired that although the prescribed information in terms of Regulation 42 of the 2011 Regulations ought to have

been sent to the Applicant this had never been done. Ms Lloyd went on to say that the same person referred to in her email of 20 June 2022 who had been responsible for failing to timeously lodge the deposit had also been responsible for failing to provide the prescribed information. She said that the information was on the Applicant's file but had not been sent.

12. The Tribunal queried with the parties if they wished to be given an opportunity to have a short adjournment to discuss an extra-judicial settlement however the Applicant said she would prefer the Tribunal to determine her application and Ms Lloyd agreed to this.
13. The Tribunal noted that in addition to the Applicant's deposit being lodged late, two other tenants' deposits had also been late, again as a result of an error by the same person who had been reprimanded and had been given further training. The Tribunal noted that in neither of these cases had the tenants made an application to the First-tier Tribunal. Ms Lloyd advised the Tribunal that no other case had been taken to the Tribunal in respect of a failure to lodge a tenant's deposit.
14. In response to a query from the Tribunal Ms Lloyd explained that ESPC Lettings dealt with approximately 150 tenant's deposits each year.

Findings in Fact and Law

15. The Applicant and Mr Matt Robertson entered into a Private Residential Tenancy agreement with the Respondent that commenced on 9 August 2021 at a rent of £775 per calendar month.
16. The Applicant and Mr Robertson paid a deposit of £975.00 to the Respondent's agents, ESPC Lettings, Edinburgh on 9 August 2021.
17. The deposit was paid into an approved tenancy deposit scheme with Safe Deposits Scheme Scotland on 28 September 2021.
18. The deposit was lodged in the scheme 7 working days late.
19. The Respondent through her said agents have failed to provide the Applicant and Mr Robertson with the prescribed information required in terms of Regulation 42 of the 2011 Regulations.
20. The tenancy is ongoing.
21. The Respondent is in breach of Regulation 3 of the 2011 Regulations.
22. The application is timeous.

Reasons for Decision

23. The Tribunal was satisfied from the documents submitted, the written representations and the oral submissions that the Applicant and Mr Robertson entered into a Private Residential Tenancy agreement with the Respondent to rent the property from 9 August 2021 at a rent of £775.00 per calendar month. The Tribunal was also satisfied that the Applicant and Mr Robertson paid the Respondent's agents ESPC Lettings a deposit of £975.00 at the commencement of the tenancy on 9 August 2021.
24. ESPC Lettings had, on behalf of the Respondent, 30 working days in which to lodge the deposit in an approved tenancy deposit scheme and provide the Applicant with the information prescribed in Regulation 42 of the 2011 Regulations. The deposit was lodged with Safe Deposits Scotland on 28 September 2022 due to what was described in Ms Lloyd's written representations as an error on the part of a staff member who had subsequently been reprimanded and had undergone further training. The deposit was seven working days late in being lodged. The funds remained in the ESPC client account until they were lodged with Safe Deposits Scotland.
25. Following the deposit being lodged the Applicant ought to have been provided with the prescribed information required by Regulation 42 of the 2011 Regulations. However, despite ESPC being aware that the deposit had been lodged late they did not send the Applicant the prescribed information and even at the date of the CMD this information had still not been provided.
26. The tenancy is ongoing and therefore the application is timeous.
27. It was not in dispute that there had been a breach of the regulations and therefore the Tribunal in terms of Regulation 10 of the 2011 Regulations must impose a financial penalty upon the Respondent. The Tribunal considered what was a fair, proportionate and just sanction in the circumstances of the case always having regard to the purpose of the Regulations and the gravity of the breach. Each case will depend upon its own facts and in the end of the day the exercise by the Tribunal of its discretion is a balancing exercise. The Applicant's deposit remained unprotected for a very short period of time and therefore it follows that any sanction to be imposed ought to be at the lower end of the scale. The Respondent has relied upon her agents and they have confirmed that they will meet any sanction imposed by the Tribunal as the fault lies entirely with them. They are a large professional organisation who should have measures in place to ensure that Tenants deposits are protected within the permitted 30 working days and that the prescribed information is sent timeously to tenants. Although human error can occur it is not an excuse. Nevertheless, were it not for the fact that the Respondent's agents had also failed to provide the Applicant with the prescribed information required by Regulation 42 the Tribunal would have made a somewhat lower award but given that this information remains outstanding more than a year after the commencement of the tenancy it is appropriate to take this into account in determining the amount of the award. Taking everything into account an appropriate award is £450.00.

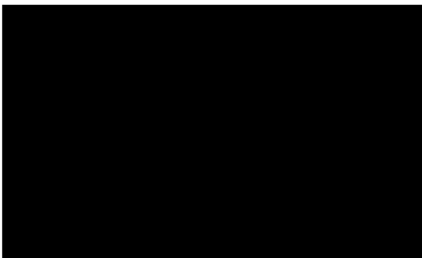
The Tribunal also considers that the Respondent through her agents should issue the prescribed information to the Applicant and Mr Robertson.

Decision

28. Having carefully considered all the information before it and being satisfied it can make a decision without the need for a hearing finds (1) the Applicant entitled to a payment by the Respondent to the Applicant in the sum of £450.00 and (2) orders the Respondent to send to the Applicant and to Mr Matt Robertson the prescribed information set out in Regulation 42 of the 2011 Regulations within 30 days of the date 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.



Graham Harding
Legal Member/Chair

27 September 2022
Date