



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

Chamber Ref: FTS/HPC/PR/22/1369

Re: Property at 18/6 (1F3) Dean Park Street, Edinburgh, EH4 1JP (“the Property”)

Parties:

Ms Grace O'Donovan, Mr Ross Oudney, 38 Willison Crescent, Tillicoultry, Stirling, FK13 6NZ; 43/5 Grove Street, Edinburgh, EH3 8AF (“the Applicant”)

Mr David Marcyniuk, 20 The Fairway, Northwood, Middlesex, HA6 3DY (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) decided to refuse the Application.

Background

The Applicants seek an award under Regulation 10 in that they claim that the Respondent failed to comply with Regulation 3 by failing to lodge their deposit of £300.00 with an Approved Scheme within 30 working days of receipt.

The Respondent has lodged representations disputing this by purporting to show the deposit as having been lodged within the necessary timescales.

The Case Management Discussion

The Application called for a Case Management Discussion (CMD) by conference call at 2pm on 18 August 2022. The Respondent was personally present. There was however no appearance by or on behalf of the Applicants. The details of the conference call had been competently notified to the First Applicant, Grace O'Donovan by email. Ms O'Donovan had consented to receive communications from the Tribunal by email. The Second Applicant had received the case papers and information about how to join the conference call by recorded delivery post which had been signed for.

The Tribunal considered there was no good reason as to why the Applicants were not in attendance and proceeded to consider matters in their absence.

The Respondent explained that he had an absolute defence to the Application in that his agents had registered the deposit within 30 working days of the tenancy commencing.

The Respondent referred to vouching submitted to the Tribunal in support of this. The Respondent explained that his previous agents had changed the Approved Scheme used to hold the deposit mid-way through the tenancy. The Respondent stated that the Applicants had obviously thought that when they saw that the £300.00 deposit was registered on 12 March 2020, that this was in breach of the Regulations. The Respondent however advised that the deposit had been previously registered with another Approved Scheme and so the Application was misconceived as the deposit was never unprotected.

As the Respondent appeared to have an absolute defence to the Application, the Tribunal decided to refuse the Application.

Decision

The Application is refused.

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

Date: 18/08/2022