



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

Chamber Ref: FTS/HPC/PR/22/1573

Re: Property at Flat 72, 15 Ibroxholm Oval, Glasgow, G51 2TY (“the Property”)

Parties:

Blair Henney, Ms Aimee Stewart, Flat 72, 15 Ibroxholm Oval, Glasgow, G51 2TY (“the Applicant”)

Lowther Homes, Lowther, wheatley House, 25 Cochrane Street, Glasgow, G1 1HL (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order for payment against the Respondent in favour of the Applicants in the sum of £345.

Background

1. The Applicants submitted an application under Rule 103 for an order for payment on the basis that it was said that the Respondent had failed to comply with the Tenancy Deposit Schemes (Scotland) Regulations 2011.
2. By decision dated 9 June 2022, a Convenor of HPC having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion.
3. The Notice of Acceptance was intimated to the Applicants’ representative on 13 June 2022. Letters were issued on 19 July 2022 informing both parties that a case management discussion had been assigned for 18 August 2022 at 2pm, which was to take place by conference call. In that letter, the parties were also told that they required to take part in the discussion and were informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and considers the procedure to have been fair. The

Respondent was invited to make written representations by 9 August 2022. No written representations were received by the Tribunal.

The case management discussion

4. The First Applicant, Mx Henney participated in the case management discussion. The discussion took place by conference call and proceeded in the absence of the Respondent. The First Applicant explained that someone from the Respondent left a voicemail for the First Applicant to call back to discuss the present application. However, the First Applicant did not feel comfortable discussing matters with the Respondent, so there has been no further contact between the parties in relation to the present application. The First Applicant explained that the Respondent sent a letter to the Applicants (undated) advising that the deposit had been placed in an approved scheme, but that letter did not acknowledge that the Respondent was late in doing so. The letter did indicate that it was open to the Applicants to make an application to the Tribunal. The Tribunal observed, and the First Applicant acknowledged, that the deposit had been placed in an approved scheme within 32 working days of the Applicants' paying over the deposit.

Findings in Fact

5. The parties entered into a private residential tenancy which commenced 30 September 2021.
6. The Applicants paid a deposit of £690 to the Respondent on 29 September 2021.
7. The Respondent paid the Applicants' deposit to an administrator of an approved scheme on 12 November 2021.
8. The Respondent failed to comply with its duty in terms of Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 in respect that the deposit paid by the Applicants was not paid to an administrator or an approved scheme within 30 working days as required.

Reason for Decision

9. The Tribunal proceeded on the basis of the written documents which were before it and the information provided by the parties at the case management discussion. The Respondent failed to submit written representations and failed to participate in the case management discussion. There was no material before the Tribunal to indicate that the Respondent disputed the breach of the Regulations. The fact that the deposit was not lodged within the required 30 working days resulted in the Applicants deposit being unprotected for 2 days.
10. The Regulations exist to protect a tenant's deposit and to provide the benefit of dispute resolution, if required.

11. The terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 are mandatory and state *“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.”
12. The Tribunal was satisfied that the Respondent failed to comply with its duties in terms of that regulation. It was the Respondent’s duty to pay the deposit to the scheme administrator within 30 working days and it failed to do that. The Tribunal was mindful of the fact that the deposit was lodged in an approved scheme 32 days after it was paid to the Respondent. The deposit was unprotected for a very short period of time.
13. The Tribunal considered that its discretion in making an award requires to be exercised in a manner consistent with the case *Jenson v Fappiano (Sheriff Court) (Lothian & Borders, Edinburgh) 28 January 2015*. It must be fair, just and proportionate and informed by taking account of the particular circumstances of the case.
14. The Tribunal considered 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.”*
15. The Tribunal considered that the present case is very much at the lower end of the scale and an appropriate sanction for failure to comply with the duties was to order the Respondent to pay the Applicants £345 which represents 0.5 times the amount of the deposit paid by the Applicants.

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

18 August 2022

Date