



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 (Regulations)

Chamber Ref: FTS/HPC/PR/22/1645

Re: Property at Flat 0/2, 5 Torridon Drive, Renfrew, PA4 0US (“the Property”)

Parties:

Miss Laura Cameron, Mr Craig Dean, 2/2 500 Shieldhall Road, Glasgow, G51 4HE (“the Applicant”)

Mr David Iain McCrone, 2 Roundhouse Crescent, Renfrew, PA4 8FN (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the sum of £725 to the Applicant

Background

This is an application under Regulation 9 of the Regulations and Rule 103 of ***The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Rules)*** in respect of an alleged failure to protect a tenancy deposit.

The Tribunal had regard to the following documents:

1. Application received 29 May 2022;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 26 November 2021;
3. Written Representations from Respondent dated 11 August 2022.

Case Management Discussion (CMD)

The CMD proceeded by conference call.

The Applicant participated and represented themselves. The Respondent participated and represented himself.

The Tribunal then heard from the parties.

The Respondent's position was that the deposit was not protected due to oversight on his part. The Respondent is an inexperienced landlord, has been letting this property for a couple of years and the Applicant were his second tenants. He was aware of the Regulations. For reasons outlined in his written representations of 11 August 2022 he had not protected the deposit. He apologised to the Applicant for this and confirmed the deposit was repaid on 15 July 2022 after the tenancy had ended on 25 May 2022.

The Applicant confirmed the tenancy had ended on 25 May 2022 and that they received repayment in full of the deposit on 15 July 2022 but only after the current proceedings had been raised.

Decision and Reasons

The Tribunal considered that it had sufficient information to determine the matter at this stage and that the procedure was fair.

The Tribunal considered the evidence before it and made the following findings in fact:

1. The Parties entered into the PRTA commencing 26 November 2021;
2. The Applicant paid a deposit of £725 at the commencement of the PRTA;
3. The PRTA ended on 25 May 2022;
4. The deposit was unprotected for a period of over 8 months;
5. The Respondent is an inexperienced landlord who has only been in business for a couple of years and this is his only letting property ;
6. The respondent was aware of the requirement to protect the deposit;
7. The Respondent's failure to protect the deposit was due to oversight on his part;
8. The Applicant received full repayment of the deposit on 15 July 2022.

It was not in dispute that the tenancy deposit had not been protected in breach of the regulations. Having made that finding it then fell to the Tribunal to determine what sanction should be made in respect of the breach. In so doing the Tribunal considered, referred to and adopted the approach of the court in ***Russell-Smith and others v Uchegbu [2016] SC EDIN 64***. 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 Tribunal weighed all the factors and found it be of significance that the deposit was unprotected for over 8 months; the Respondent was an inexperienced landlord, this was his only letting property but he had knowledge of the requirement to protect the deposit; the failure to protect the deposit was due to oversight; the Respondent had repaid the deposit in full.

In the circumstances the Tribunal considered the breach to be at the lower end of the scale and awarded the sum of £725.

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.

A. Strain

18 August 2022

Legal Member/Chair

Date