



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/PR/22/1653

Re: Property at 1F1 28 Hamilton Place, Edinburgh, EH3 5AU (“the Property”)

Parties:

Mr Stephen Edwards-Muthu, 3F4 49 Balcarres Street, Edinburgh, EH10 5JQ (“the Applicant”)

Mrs Jean Grier, 9 Malta Terrace, Edinburgh (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a Payment Order in the sum of FOUR HUNDRED AND NINETY FIVE POUNDS STERLING (£495.00) be granted.

Background

1. By application received on 31 May 2022 (“the Application”), the Applicant applied to the Tribunal for an Order in terms of Regulation 10 of the Regulations. The Application comprised copy correspondence between the Parties showing that a deposit had been paid in respect of a tenancy agreement between them. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 22 August 2022 at 14.00 by telephone conference.
2. Prior to the CMD both Parties submitted written representations to the Tribunal.

Case Management Discussion

3. The CMD took place on 22 August 2022 at 14.00 by telephone. Both Parties took part.

4. The Applicant confirmed the detail of the Application and stated that he had paid the deposit in 2006, prior to the Regulations coming into force and was aware that it had not been lodged with an approved scheme.
5. The Respondent accepted that the deposit had not been lodged in terms of Regulation 47 of the Regulations. She explained, as set out in her written representations, that she had not been aware of this requirement until August of this year at which time she lodged the deposit with SafeDeposit Scotland. She explained that the approved scheme website made it difficult to do this with any ease.

Findings in Fact

6. From the Application, the written representations and the CMD, the Tribunal made the following findings in fact: -
 - i) There had been a tenancy of the Property between the Parties which began in 2006;
 - ii) A tenancy deposit of £495.00 was paid at that time;
 - iii) The tenancy deposit ought to have been lodged with an approved scheme within nine months of the Regulations coming into force fully;
 - iv) The tenancy deposit was lodged with SafeDeposit Scotland in August 2022;

Decision and Reasons for Decision

7. The Tribunal had regard to the following Regulations: -

Regulation 3 which states:- *“(1) 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. (2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.”*;

Regulation 42 which states *“(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3) (2) The information is (a)confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord; (b)the date on which the tenancy deposit was paid to the scheme administrator; (c)the address of the property to which the tenancy deposit relates; (d)a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act; (e)the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and (f)the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement. (3) The information in paragraph (2) must be provided (a)where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or (b)in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme; and*

Regulation 10 which states *“If satisfied that the landlord did not comply with any duty in regulation 3 the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit”*

8. From the Findings in Facts, the Tribunal determined that the Respondent had breached Regulation 3 by failing to ensure that the deposit was lodged with an approved scheme as required by Regulation 47. Therefore, the Tribunal was bound to make an Order in terms of Regulation 10 and had no discretion in that regard.

9. The Tribunal noted that the Respondent’s position that she had been unaware of this requirement and, on becoming aware, she lodged the deposit with an approved scheme. The Tribunal accepted that although the deposit had not been lodged, it had not been at risk. The Tribunal took the view that it was not reasonable or proportionate to make an award for the full amount of three times the deposit. The Tribunal took the view that the Respondent’s failure to comply with the Regulations was at the lower end of a breach of the Regulations. Accordingly, the Tribunal awarded the Applicant the sum of £495.00.

10. Having made that decision, the Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal “may do anything at a case management discussionincluding making a decision” and so proceeded to make an order for payment in the sum of £495.00.

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

22 August 2022
Date