



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section the Housing (Scotland) Act 2006 section 121 and Regulation 9 the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/22/1714

Re: Property at 13 Easter Drylaw Bank, Edinburgh, EH4 2QL (“the Property”)

Parties:

Mr Steven Soutar, 34 Juniper Hill, Glenrothes, Fife, KY7 5TH (“the Applicant”)

Mrs Rui Ji Deng, 117 Queen Margaret Drive, Glenrothes, KY7 4DT (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that that the Landlord is in breach of her obligations in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“Regulation 3”). The Respondent shall make payment to the Applicant in the sum of FOUR HUNDRED AND FIFTY POUNDS (£450) STIRLING

Background

1. The Tribunal received an application from the Applicant in terms of Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017 which was dated 1st June 2022. The Application included a lease which detailed that a deposit of £450 had been paid.
2. On 23rd July 2022, all parties were written to with the date for the Case Management Discussion (“CMD”) of 7th September 2022 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 13th August 2022.

3. On 2022 , sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service and by post. This was evidenced by Certificate of Intimation dated 2022.
4. On 11th August 2022, the Respondent's representative, who is also her son, submitted representations that the Respondent had entered into a lodgers agreement erroneously and now appreciated that it should have been a Private Rented Tenancy Agreement ("PRT") because the Applicant was not living in the Property. This meant that the deposit had not been lodged as per the terms of the rules.

The Case Management Discussion

5. A CMD was held on 7th September 2022 at 2pm. The Applicant represented himself. The Respondent was present but did not take part in the CMD. She let her representative, Mr Xuanzhao Zhou, speak entirely on her behalf.
6. The Applicant advised that he maintained his position and was seeking for a penalty to be awarded up to three times the deposit.
7. Mr Zhou told the Tribunal that his mother had intended to live in the Property with him. However, she had been commuting to Glenrothes to work. This was not sustainable so she took a property in Glenrothes. This meant that there was a room available in the Property. The Respondent had let it out to the Applicant as he had been sharing with Mr Zhou immediately prior to that in another accommodation. The Applicant thought that it was a lodger agreement as she considered that the Applicant was a lodger. As a result she did not lodge the deposit in an approved scheme. She was not a registered landlord. She now realises that this was an error and that it should have been a PRT and that the deposit should have been lodged. The Applicant was unhappy with the situation in the Property and left. When he left Mr Zhou had arranged for his deposit to be returned to him he added an additional £100 as a gesture of good will. Mr Zhou advised that his mother has since retired from her job in Fife and is now living in the Property with him. She has not registered as a landlord and the Property will not be let out again. Both the Respondent and Mr Zhou are more aware of their legal obligations and realised that they would need to seek advice before letting the Property again. However, it is now the family home and they do not intend to let it out. Mr Zhou apologised for what had happened.
8. The Tribunal considered that the Respondent had not adhered to the regulations but noted that this was her only Property and that she did not wish to let it out again as it is now the family home. This warranted a penalty being issued. The Tribunal considered that the fair, reasonable and proportionate amount would be a one times fine. Mr Zhou offered to pay that to the Applicant later on the day of the Tribunal and would arrange this by bank transfer. The Tribunal noted that the Order will not be sent out for 30 days until the appeal period has lapsed. Mr Zhou wished for amount to be paid sooner and the parties

confirmed that the Applicant's bank details remained the same from when the Applicant had lived in the Property.

Findings and reason for decision

9. A Private Rented Tenancy Agreement ("PRT") commenced on 3rd December 2019. While the parties had signed a lodger agreement this was not in fact correct and the correct lease was a PRT. The Applicant left the Property on 2nd May 2022.
10. A deposit of £450 was paid on 23rd December 2019.
11. The deposit was not lodged with any approved scheme. This is a breach of the regulations.
12. The Respondent has failed to comply with the regulations to ensure that the deposit was lodged in an appropriate scheme within 30 days from the start of the tenancy. The Respondent has engaged with the Tribunal process to advise why this has happened and is not going to let the Property out again.

Decision

13. The Respondent has a duty under Regulation 3 to place the deposit in an approved scheme within the specified time but failed to do so. The Respondent has engaged with the Tribunal process to explain why the deposit was not paid into an approved scheme and has decided not to let the Property again. The Tribunal decided that a fair, just and proportionate sanction would be to order the Respondent to pay the Applicant one times the amount of the deposit (£450.00).

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

J Taylor

G Miller

7th September 2022

Legal Member/Chair

Date