



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

Chamber Ref: FTS/HPC/PR/22/3014

Re: Property at Flat 2/2 94 Middleton Street, Glasgow, G51 1AE (“the Property”)

Parties:

Ms Cassandra Mendonca, Flat 18, 15 Ibroxholm Oval, Glasgow, G51 2TX (“the Applicant”)

Mr Bhavin Shah, Flat 8 517 Shields Road, Glasgow, G41 2RF (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Landlord is in breach of his 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 £500.00 (FIVE HUNDRED POUNDS)

Background

1. The Tribunal received an application from the Applicant was dated 4th August 2022 in terms of Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017 which. The Application included a lease which detailed that a deposit of £500 had been paid.
2. On 25th October 2022, all parties were written to with the date for the Case Management Discussion (“CMD”) of 1st December 2022 at 10am by teleconferencing. The letter also requested all written representations be submitted by 15th November 2022.

3. On 27th October 2022, sheriff officers served the letter with notice of the CMD date and documentation upon the Respondent by letterbox service. This was evidenced by the Certificate of Intimation dated 27th October 2022.
4. On 15th November 2022, the Respondent emailed the Housing and Property Chamber giving a background to the situation. He advised that matters regarding the tenancy were handled by his former letting agent. He had not been aware that the deposit had not been lodged.
5. On 23rd November 2022, the Applicant's solicitor emailed the Housing and Property Chamber with further submissions. This included reference to the legislation and the case law relating to a landlord's duty to comply with the regulations and that not being aware of the legal requirements was not relevant.

The Case Management Discussion

6. A CMD was held on 1st December 2022 at 10am by teleconferencing. The Applicant was not present but was represented by Ms Kathryn Cochrane, Solicitor, Govan Law Centre. The Respondent was present and represented himself.
7. Ms Cochrane adopted her submissions as the current position of the Applicant and outlined the history of the case. She moved for a three time penalty to be awarded.
8. The Respondent said that he had been unaware of his legal obligations which is why he engaged the services of a letting agent. He has since researched what his obligations are to a tenant. He admitted that there was a breach but that he had not been aware of it. He is not going to let the Property out again. It is his intention to move back into the Property in January. He will give up his registration when he moves back into the Property. It was always his intention to move back into this property. He noted that the Applicant did have her deposit returned to her. He said that he contacted the letting agents that he had used but found them to be rude to him. They said that it was not a matter for them as they were no longer managing the Property. He also noted that they had not paid him the last two months rent.
9. The Tribunal considered that a one time fine was appropriate as there had been a breach which was admitted. The Tribunal noted that the Respondent was unaware of the deposit not being lodged but that the law still required to be complied with.

Findings and reason for decision

10. A Private Rented Tenancy Agreement commenced 1st June 2020. The tenancy ended on 16th June 2022.

11. A deposit of £500 was paid. This was paid in two instalments. The first for £50 on 21st April 2020 and the second for £450 on 30th April 2020.
12. The deposit was not lodged with any specified safe deposit scheme at any point. This is a breach of the regulations.
13. 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. Though the failure to lodge the deposit was due to the letting agent the Respondent remains legally responsible to ensure that the deposit is lodged within 30 days. The Respondent accepted that there has been a breach of the regulations. The Respondent is renovating the Property with a view to moving back into it in January. He will also give up his landlord registration then. Since this process has begun he has looked into his legal obligations further but does not intend to let the Property again.

Decision

14. 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's letting agent had not followed the legal requirements to lodge the deposit in an approved deposit scheme. However, the legal responsibility remains with the Respondent. The Respondent admitted the breach. He also has made himself aware of his legal duties as a landlord. He has not let out the Property since and is intending to move back into it in January. He will then remove himself from the landlord register. The Tribunal considered that the Respondent had taken steps to prevent such a situation happening again and had also admitted the breach. 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 (£500.00).

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.

G. Miller

1st December 2022

Legal Member/Chair

Date