



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 (“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/20/0822

Re: Property at 1 Gallowhill Grove, Kirkintilloch, Glasgow, G66 4QF (“the Property”)

Parties:

Mrs Emma Rendell, 87, Larkfield Road, Lenzie, Glasgow, G66 3AS (“the Applicant”)

Mr Scott Donaldson, 19 Taig Road, Kiirkintilloch, G66 3LT (“the Respondent”) per his agents, U.A. Coda Estates, 2-4, Heath Avenue, Lenzie, Glasgow, G66 4LG (“the Respondent’s Agents”)

Tribunal Members:

Karen Moore (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order in the Sum of SEVEN HUNDRED AND FIFTY POUNDS STERLING (£750.00) be granted.

Background

1. By application received on 9 March 2020 (“the Application”), the Applicant made an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Chamber”) for a determination and an order in terms of Rule 103 of the Rules and Regulation 9 of the Regulations. The Application

comprised an application form, copy tenancy agreement commencing on 1 August 2015, evidence of lodging a deposit of £500.00 by the Respondent's Agents with SafeDeposits Scotland, an approved tenancy deposit scheme provider on 3 May 2018.

2. On 12 March 2020, a legal member of the Chamber with delegated powers of the Chamber President accepted the Application and a Case Management Discussion ("CMD") was fixed for 17 August 2020 at 14.00 by telephone conference call. The Application was intimated to the Respondent. The CMD was intimated to both Parties.
3. The Respondent's Agents lodged copy emails with the Tribunal on 14 17 August 2020 which emails were copied to the Applicant.
4. The CMD took place on 17 August 2020 at 14.00. The Applicant took part. The Respondent did not take part and was represented by Ms. Sharon Cooke of the Respondent's Agents. The Tribunal explained the role of the Tribunal and its powers within the Scottish Courts Administration. The Tribunal explained the purpose of the CMD in terms of Rule 17 of the Rules.

Summary of Discussion

5. The Tribunal advised the Applicant that it had read and was familiar with all of the background papers. The Tribunal asked the Applicant to confirm that she had paid a tenancy deposit, the amount paid, to whom it was paid and the date on which it was paid.
6. The Applicant advised that she had paid a tenancy deposit of £550.00 to the Respondent's previous letting agents, Homesbook, the amount paid, on 24 July 2015 when she signed the lease. She did not receive notification that the deposit had been lodged and with which tenancy deposit scheme provider.
7. From the emails lodged by the Respondent's Agent, it appeared to the Tribunal that Coda Estates had taken over the letting duties after the tenancy began and that Coda Estates had lodged the deposit with SafeDeposits Scotland at this time. The Respondent's Agent confirmed that this was so and that only £500.00 was held, not £550.00 as claimed by the Applicant and clarified that it had been the previous letting agents, Homesbook, who lodged the deposit before the portfolio was transferred to Coda Estates but that incorrect email addresses had been given by Homesbook to SafeDeposits Scotland and so neither the Applicant nor the Respondent had been given notice that the deposit had been lodged.

8. The Tribunal referred the Parties to the wording in Regulations 3 and 42 of the Regulations which 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” and “The landlord must provide the tenant with the information (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.”

9. As it appears that the Respondent or his then agents did not lodge the tenancy deposit within the timeframe set out in Regulation 3 and had not provided the information required by Regulation 42, it appears that the Respondent has not complied with these Regulations.
10. The Tribunal then referred the Parties to the wording in to Regulation 10 of the Regulations 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”*.
11. The Tribunal advised the Parties that an order must be granted and the only issue was the amount of the order.
12. The Tribunal asked the Respondent's Agent if she had specific instructions from the Respondent on the amount of the deposit lodged and the reasons for the late lodging of the deposit. The Respondent's Agent advised that she had discussed the matter in full with the Respondent who was fully aware of the position and had taken full instructions from him.
13. The Tribunal asked the Respondent's Agent if she had discussed the payment order which might be granted and explained that the Respondent had offered compensation payment of £250.00 plus furnishings from the Property but that this had been rejected by the Applicant. The Applicant agreed that this was the case and advised that she was of the opinion that 1.5

times the deposit was a more usual and acceptable amount of award. The Applicant considered that a higher level of award reflected the upset she had suffered as a result of finding out that the deposit had not been lodged.

14. The Parties agreed that the amount of £550.00 had been repaid to the Applicant.
15. The Tribunal allowed a short adjournment of 15 minutes to enable the Respondent's Agent to contact the Respondent in respect of making an extrajudicial offer to the Applicant. The Tribunal explained that it was entirely a matter for the Parties and that if a satisfactory offer was made, the Applicant could accept it and withdraw the Application meaning that an order would not be made and would not be recorded against the Respondent.
16. Following the adjournment, the Respondent's Agent on behalf of the Respondent offered 1.5 times the deposit and apologised for the stress and inconvenience caused to the Applicant. The Applicant declined this offer.
17. The Tribunal advised the Parties that it did not consider that any further information could be brought forward to merit a Hearing or a further case management discussion on the amount and so the Tribunal would make a determination on the information before it and grant an order.

Findings of the Tribunal.

18. From the Application and the CMD, the Tribunal found the following facts to be established: -
 - i) There was a tenancy between the Parties beginning on 1 August 2015;
 - ii) The Applicant paid a tenancy deposit of at least £500.00 to the Respondent's then letting agents at that time;
 - iii) A tenancy deposit of £500.00 was lodged with SafeDeposits Scotland on 7 February 2018, by the Respondent's previous letting agents;
 - iv) The information required in terms of Regulation 42 of the Regulations was not provided to the Applicant;
 - v) The Respondent had relied on his previous letting agents to fulfil his duties in terms of the Regulations and they had failed him in this regard.

Decision of the Tribunal and Reasons for the Decision.

19. The Tribunal had regard to Regulations 3 and 42 of the Regulations which 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” and “The landlord must provide the tenant with the information (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.”

20. Having found that the Respondent had not lodged the tenancy deposit within the timeframe set out in Regulation 3 and had not provided the information required by Regulation 42, the Tribunal determined that the Respondent had not complied with these Regulations.

21. The Tribunal had then had regard to Regulation 10 of the Regulations 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”*.

22. Accordingly, having been satisfied that the Respondent did not comply with Regulation 3 of the Regulations, the Tribunal was obliged to grant an order.

23. The Tribunal then 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 proceeded to make an order in terms of Regulation 10 of the Regulations.

Order and Reasons for the Order.

24. The Tribunal took account of all of the information before it including the Applicant's views in respect of the effect on her and the position of the Respondent that he had relied on his then letting agents and had not deliberately set out to breach the Regulations.

25. The Tribunal had regard to the purpose of the Regulations which is not only to ensure that landlords lodge tenancy deposits with an independent agency but also advise tenants where deposits are held to reassure tenants that deposits are not being misused. In this instance, the Applicant did not have the reassurance that the tenancy deposit was held securely for the duration of the tenancy.

26. The Tribunal accepted that the Respondent had relied on his previous letting agents and took into account the effect of a payment order being granted.

27. In all the circumstances, the Tribunal determined that an order of £750.00 being in excess of one times the deposit and less than twice the deposit is fair, reasonable and proportionate.

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.

Karen Moore

17 August 2020

Legal Member/Chair

Date