



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

Chamber Ref: FTS/HPC/PR/20/2481

Re: Property at 22 Chapelgill Place, Irvine, KA11 1LQ (“the Property”)

Parties:

Miss Elisha Bennison, Mr Ben Niven, 16 Cheviot Gardens, Irvine, KA11 1GZ; 7 Siplaw Foot, Irvine, KA11 1EJ (“the Applicants”)

Pamela Stewart, c/o Lyn-Mar, 20 West George Street, Kilmarnock, KA1 1DG (“the Respondent”)

Tribunal Members:

Helen Forbes (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicants in the sum of £900.

Background

1. By application dated 28th November 2020, the Applicants are seeking an order in terms of Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”). Parties entered into a tenancy agreement in respect of the Property that commenced on 3rd July 2018 and ended on 29th September 2020. The Applicants paid a deposit of £450 before the commencement of the tenancy. The Applicants allege that the Respondent has failed to place their tenancy deposit in an approved tenancy deposit scheme. The Applicants are seeking an order in the sum of £1350. The Applicants lodged a copy of the tenancy agreement, correspondence between the Applicants and the Respondent’s representative, and bank statements.

The Hearing

2. A hearing took place by teleconference on 26th February 2021. The Applicants were in attendance. The Respondent was not in attendance and was represented by Ms Andrea McLean of Lynmar Letting Agent.

Representations by Applicants

3. The Applicants explained that they had discovered at the end of the tenancy that their deposit was not protected. Following an inspection of the Property, the Letting Agent had carried out cleaning at a cost of £120. The Applicants felt it was unfair that they had been deprived of the opportunity of adjudication over this amount, as they had concerns about mould in the Property, and this was included within the cleaning breakdown. They were eventually offered a reduction in the cleaning bill and paid £60. This was described as a goodwill gesture by the Respondent's representative. The Applicants have also felt aggrieved that the Respondent's representative had taken almost a month after the tenancy ended to inform them of the situation in regard to the failure to lodge the deposit. The situation had caused them stress, and the Applicants felt that, in all the circumstances of the case, an award of three times the tenancy deposit should be made.

Representations on behalf of the Respondent

4. Ms McLean said that the failure to lodge the tenancy deposit was an oversight by the Letting Agent. The money was held in the client account, which is not interest bearing. The Letting Agent has been in existence for 23 years. There has been one other occasion when the Letting Agent failed to lodge a tenancy deposit until three days after the 30 day period required by the Regulations had passed. Responding to questions from the Tribunal, Ms McLean said that the usual procedure was that deposits were paid prior to entry to a property. After the tenancy commenced, the deposit would be paid to an approved tenancy deposit scheme before the expiry of the 30 day period.
5. The Respondent was not aware, during the tenancy, that the tenancy deposit had not been lodged with an approved tenancy deposit scheme. The Letting Agent was acting as the Respondent's agent in this matter and it was their responsibility to lodge the tenancy deposit. She was now aware of the error.
6. Ms McLean said that the delay in discovering that the tenancy deposit had not been lodged and in telling the Applicants was due to the fact that staff were working from home due to the Covid-19 pandemic, and one member of staff had been on sick leave. Ms McLean had eventually visited the office and had discovered the error on their main system.

Findings in fact

7.
 - (i) The parties entered into a private rented tenancy agreement commencing on 3rd July 2018. The tenancy ended on 29th September 2020.
 - (ii) A tenancy deposit of £450 was paid to the Respondent's representative by the Applicants at the start of the tenancy.
 - (iii) The deposit was not lodged with an approved tenancy deposit scheme. The deposit remained unprotected throughout the duration of the tenancy.
 - (iv) The Respondent has breached Regulation 3 by failing to lodge the deposit in an approved tenancy deposit scheme.

Reasons for Decision

8. The Regulations were put in place to ensure compliance with the tenancy deposit scheme, and to provide the benefit of dispute resolution for parties. The Tribunal considers that its discretion in making an award requires to be exercised in the manner set out in the case *Jenson v Fappiano (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015* by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case. The Tribunal must consider the facts of each case appropriately.
9. The Tribunal took into account that the deposit was unprotected throughout the duration of the tenancy. The Tribunal considered that this was a serious matter. The tenancy agreement provided that the deposit would be timeously lodged. While the Respondent was not aware of the situation, her agent, the Letting Agent, was an experienced letting agent, with full knowledge of the Regulations and their responsibilities. The failure of the Letting Agent deprived the Applicants of the opportunity for adjudication over their deposit.
10. Whilst the Applicants sought the maximum of three times the deposit value to be awarded, the Tribunal took guidance from the decision of the Upper Tribunal UTS/AP/19/0020 which states: '*Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals.*'

11. The Tribunal did not consider this to be a case at the most serious end of the scale. There did not appear to be fraudulent intention or deliberate or reckless failure to observe the responsibilities of the landlord. The Tribunal took into account that the Letting Agent admitted responsibility. The Tribunal considered that the delay in discovering the true situation at the end of the tenancy was due to the unusual circumstances of the Covid-19 pandemic.
12. Taking all the circumstances into account, the Tribunal decided it would be fair and just to award a sum of £900 to the Applicants, which is twice the tenancy deposit.

Decision

13. An order for payment is granted in favour of the Applicants in the sum of £900.

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.

H. Forbes

Legal Member/Chair

26th February 2021
Date