



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/20/2617

Re: Property at Room 5, Flat 0/1, 57 Clouston Street, Glasgow, G20 8QW (“the Property”)

Parties:

Miss Sarah Isaacs, Flat 20 Paxton Court, Locks Road, Southampton, SO31 6BH (“the Applicant”)

Lets Direct (Southside) LTD, Lets Direct (Southside) LTD, 605 Cathcart Road, Glasgow, G42 8AD (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) being satisfied that the Respondent as landlord of the property at Room 5, Flat 0/1, 57 Clouston Street Glasgow G208QW, did not comply with any duty in Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011, makes an order for the Respondent to pay to the Applicant the sum of one pound (£1).**
- 2. This was a case management discussion ‘CMD’ in connection with an application in terms of Rule 103 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 ‘the rules’ for an order for a penalty in terms of Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, ‘the regulations’. The application was made by Miss Sarah Isaacs on the 16 December 2020. The applicant did not attend and was not represented. The respondent was represented by Mr Mohamed Iqbal. The tribunal was satisfied that the applicant had received appropriate notification in terms of rule 24. The tribunal therefore proceeded in her absence in terms of rule 29.**

3. The tribunal had before it the following copy documents: -

- (1) Application dated 16 December 2020.
- (2) Tenancy agreement dated 20 March 2020.
- (3) Receipt for tenancy deposit dated 20 March 2020.
- (4) Email from respondent dated 29 January 2021.

Discussion

4. The tribunal noted that the deposit was paid on 20 March 2020 but was not lodged until 21 May 2020. Regulation 3 provides that a tenancy deposit should be paid within 30 working days. The email from the respondents referred to at item 4 above set out in some detail the difficulties encountered by the respondents in lodging the deposit, given the national lockdown on 23 March 2020 due to the covid-19 pandemic. Mr Iqbal explained that 21 May 2020 was the earliest point at which his company were in a position to lodge the deposit. He conceded that the deposits are lodged online so it was physically possible to lodge the deposits through the pandemic, should his company have been in a position to do so.
5. It was Mr Iqbal's evidence that the applicant was a good tenant, and the full deposit was returned to her at the end of the tenancy. He speculated that the tenancy deposit company probably drew her attention to the fact that the deposit had been lodged late.
6. It was Mr Iqbal's evidence that his company do not own the property but act as landlords on the instructions of the owner.
7. It was Mr Iqbal's evidence that the respondents are a reputable company fully aware of their obligations in terms of the deposit scheme. The deposit was lodged 14 days late due to exceptional circumstances and through no fault of the respondents. He also gave evidence that to his knowledge there has been only one other deposit that was not lodged in time due to the pandemic.

8. Findings in fact

- The applicant rented the property from the respondent from 20 March 2020 until 20 November 2020.
- The applicant paid a deposit of £550 to the respondent on 20 March 2020 as his landlord.
- The deposit was not lodged into an approved scheme within 30 working days of 20 March 2020.
- The deposit was lodged 14 days late on 31 May 2020.

Reasons

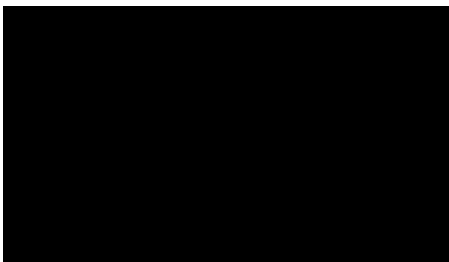
9. This was a breach of the regulations as the respondent's failed to lodge the deposit into a scheme within 30 working days. This was because of the pandemic. The respondent's premises were closed from 23 March 2020 and the whole organisation of the company was thrown into disorganisation until a system of home working could be set up.
10. The tribunal reviewed all of the recent cases regarding tenancy deposit schemes and noted that in the case of Kirk-v-Singh 2015 SLT (Sh Ct) 111 sheriff Jamieson was mindful of the need to:-

proceed to impose a sanction which is "fair, proportionate and just having regard to the seriousness of the noncompliance.

11. The tribunal considered this to be a very minor breach. The respondent was 14 days late in lodging the deposit due to the completely unprecedented circumstances of the global pandemic. The tribunal has no discretion in awarding a penalty as a breach has occurred. The tribunal can however impose a penalty which reflects this was a minor breach which was swiftly rectified. Accordingly, the tribunal decided a penalty of £1 was fair, proportionate and just in all of the circumstances. The tribunal made the decision in the applicant's absence. The tribunal was satisfied that it has sufficient information before it to make a decision and the procedure had been fair. The tribunal considers that even if the applicant had attended, the decision would have been the same.

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.



Lesley A ward Legal Member

19 February 2021

Date