



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/21/0796

Re: Property at Flat 0/2, 10 Greenlaw Avenue, Paisley, PA1 3RA (“the Property”)

Parties:

Mr Paul McMeekin, Mrs Katrina Chopper, 140 Broomhill Crescent, Alexandria, G83 9QL (“the Applicants”)

Ms Yvonne Moore, C/O Castle Residential, 63 Causeyside Street, Paisley, Renfrewshire, PA1 1YT (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision (in absence of the Applicants)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined 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 NINTY FIVE POUNDS (£495) STIRLING

Decision (in absence of the Applicants)

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 on 30th March 2021 which was dated 24th February 2021.

2. The Applicants advised in the application that the tenancy had commenced on 21st April 2017. The tenancy is a short assured tenancy. The Respondent did not place the deposit in any scheme.
3. The deposit paid was £495, paid April 2017.
4. On 19th April 2021, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent which was received by Stuart Campbell, letting consultant. This was evidenced by Certificate of Citation dated 19th April 2021.
5. On 7th May 2021 an email was received from the Respondent with representations regarding the case.
6. The Respondent's letting agent emailed on 7th May 2021 with a submission. In the submission it was admitted that the deposit was not paid due to an error which meant it was paid to the landlord along with a pro rata rent payment.
7. Safe Deposits Scotland confirmed the deposit was paid in to their scheme on 12th January 2021.
8. The deposit was returned to the Applicants after they left the Property on or around March 2021.

The Case Management Discussion

9. The Tribunal held a Case Management Discussion ("CMD") on 19th May 2021 at 2pm by teleconferencing. The Applicants were not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent was represented by Mrs Jackie McLelland from Castle Residential. The Respondent was not present. The Tribunal considered the Application. The Applicants were written to on 16th April 2021 advising of the date and time of the hearing. The Tribunal considered it appropriate to proceed in the absence of the Applicants as the case regarded a breach of regulations which had been admitted to by the Respondent's letting agent.
10. Mrs McLelland told the Tribunal that the deposit had not been put into an approved scheme due to an error. The procedure is to take the deposit from the prospective tenants prior to entry and have it held for a cooling off period. Once the tenants have occupied the Property it is lodged in an approved scheme. She advised the Tribunal that at the entry date there is a check list and one part of that is that the deposit has been received. The deposits are collated and put into the appropriate scheme twice a month to ensure that a deposit is lodged within 30 days from the start of the tenancy. Mrs McLelland will then do a bank reconciliation each month to check that all deposits have been lodged. In this case the Property was looked after by member of the letting agent staff who was a friend of the Applicants who now no longer works for the

letting agent. He had taken the deposit and a pro rata amount of rent as one lump sum. This was then paid over to the Respondent. It was assumed that it was a rent payment as the deposit is dealt with in a different manner. Once the Applicants had raised that the deposit was not in an approved scheme Castle Residential put it in an approved scheme on 12th January 2021. The Applicants left the Property on or around March 2021 and they were returned their full deposit. Mrs McLelland explained that Castle Residential deal with approximately 500 deposits a year and this was the only one not to have been lodged. She noted that this was primarily down to the former employee who did not follow procedure.

Findings and reason for decision

11. The Applicant paid a deposit of £495 in April 2017 in respect of a tenancy in the property owned by the Respondent.
12. The start date of the tenancy was 21st April 2017 with an end date of 21st April 2018. The tenancy continued on a two monthly basis thereafter. The Applicants left the Property on or around March 2021.
13. A former employee at Castle Residential failed to follow procedure regarding the deposit which caused the deposit to be paid over to the Respondent as a rent payment.
14. The Applicants deposit was not lodged into an approved scheme.
15. The Respondent did not meet her duties in terms of Regulation 3.
16. The deposit was lodged into an approved scheme on 12th January 2021.
17. The Deposit has been repaid to the Applicants shortly after they left the Property.

Decision

18. 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 Castle Residential deal with the administration of letting the Property. A former employee of Castle Residential dealt with the letting of the Property to the Applicants. He had, however, not followed procedure regarding the lodging of the deposits into an approved deposit scheme. This caused the Respondent to not meet her duties in terms of Regulation 3. However, the Tribunal accepted that there are procedures in place that were not followed and that this centred around a former employee. As soon as it was raised to Castle Residential the deposit was lodged into an approved scheme. 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 (£495).

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.

Gabrielle Miller

19th May 2021

Legal Member/Chair

Date