



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

Chamber Ref: FTS/HPC/PR/22/0738

Re: Property at 7 Goslaw Green, Selkirk, TD7 4EJ (“the Property”)

Parties:

Miss Jo Blyth, 14 Yarrowford, Selkirk, TD7 5NA (“the Applicant”)

Mr Peter Laing, Le Noyer, Ettrick Terrace, Selkirk, TD7 4LE (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the respondent must pay the sum of one thousand five hundred pounds (£1,500) to the applicant

Introduction

This is an application under Rule 103 and Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Service of the application and intimation of the Case Management Discussion (CMD) was effected upon the respondent by Sheriff Officers on 24 March 2022.

Both parties had lodged further written submissions in advance of the CMD.

The CMD took place by teleconference on 4 May 2022 at 10.00 am. Both parties joined the hearing and represented their own interests.

Findings and Reasons

The property is 7 Goslaw Green, Selkirk TD7 4EJ.

A tenancy agreement in respect of the property commenced on 1 February 2021. A written agreement was entered into which was entitled "Short Assured Tenancy Particulars". This purported to be a tenancy within the meaning of Section 32 of the Housing (Scotland) Act 1988. This was not lawful. Short assured tenancies could not be created from 1 December 2017.

The tenancy agreement meets all of the statutory requirements under the Private Residential (Tenancies) (Scotland) Act 2016 and the lease arrangement between the parties is a private residential tenancy under that Act.

The applicant is Miss Jo Blyth. She is the former tenant. The respondent is Mr Peter Laing who is the landlord.

In terms of the written lease, the monthly rent was stipulated at £500 per month. A deposit was paid by the applicant to the respondent in the sum of £500.

The applicant has terminated the tenancy and vacated on 15 December 2021.

The applicant was residing in the property with her two young children. She was unhappy and concerned with the condition of the property. The applicant latterly ceased paying rent due to the condition of the property. This followed on from her concerns regarding the condition of the property and taking advice from the local authority who had sent someone to inspect the property. The view taken was that the property did not meet the 'repairing standard' being the necessary basic condition under the Housing (Scotland) Act 2006.

The applicant has not yet received return of her deposit, some five months after vacating the property. Whilst this application does not relate to the recovery of the deposit paid, the Tribunal noted that the respondent has the intention now to return the deposit of £500 in full to the respondent.

The respondent had lodged written submissions with the Tribunal dated 30 March 2022. He candidly advised that he did not follow the Tenancy Deposit Regulations advising "I simply did not get round to transferring the money to a separate account in what was a very hectic first few months of 2020". There was no recognition of the necessity to pay the deposit into one of the three tenancy deposit schemes operating in Scotland which are SafeDeposits Scotland, Mydeposits Scotland or Letting Protection Service Scotland. The respondent confessed at the CMD to not knowing about the deposit schemes and how they operate.

The respondent has no excuse to be unaware of the Regulations and to the necessity of paying the deposit into one of the approved deposit schemes. At the CMD the respondent admitted he had no excuses and that he was at fault.

The Tribunal was satisfied that the respondent had not complied with the requirements of the 2011 Regulations and in particular did not lodge the deposit paid into an approved scheme. The duties of landlords are contained within Regulation 3. This requires the landlord who has received the tenancy deposit in connection with the relevant tenancy to pay the deposit to a relevant scheme administrator from an approved scheme within 30 working days of the beginning of the tenancy. The respondent failed to do this.

The Tribunal was satisfied that the respondent failed to comply with his duty under Regulation 3. Regulation 10 requires the Tribunal to make an Order against the respondent to pay to the applicant an amount not exceeding three times the amount of the tenancy deposit.

The Tribunal considered all relevant circumstances prior to making any Order under Regulation 10.

The respondent is operating as a commercial letting agent and yet appears to have little experience or knowledge of residential lettings given that an attempt was made to enter into short assured tenancy over 2 years after such tenancies were no longer valid. The Tribunal is satisfied having regard to the entirety of the documentary and oral evidence that the respondent has wholly failed to act diligently and professionally and failed to account to the applicant in a proper manner.

The applicant's deposit was unprotected for the entire duration of the let which was a period of over 22 months. The applicant has been disadvantaged by the respondent's failure to pay the deposit into a scheme as required. She has waited many months for return of her deposit.

The respondent by his own admission was an unregistered landlord for almost the entire duration of the let. He was previously registered but this lapsed in July 2019 (the property was empty). He did not renew his registration until 24 November 2021. It was a criminal offence for the respondent to let the property unregistered.

In all the circumstances, the Tribunal ordered that the respondent pay to the applicant the maximum sum of three times the amount of the tenancy deposit ie a total of £1,500. This is fair and proportionate in all of the circumstances. The public require to have confidence that residential landlords are operating legally and fairly and that their deposits are secured in accordance with the law in force in Scotland.

The respondent accepted at the end of the hearing that the imposition of the maximum sanction was reasonable and confirmed that the sum ordered together with the return of the original deposit in addition would be paid forthwith to the applicant.

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.

Richard Mill

4 May 2022

Legal Member/Chair

Date