



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/22/2378

Re: Property at 44 Cornhill Terrace, Aberdeen, AB16 5HH (“the Property”)

Parties:

Miss Margret Olowokere, 80 Garthdee Road, Aberdeen, AB10 7AR (“the Applicant”)

Itihasali Hassam, Imtiaz Ali and Company Limited, West End Garage, The Cross, Pencait Land, Tranent, EH34 5DA; West End Garage House, The Cross, Pencaitland, Tranent, EH34 5DB (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent to the Applicant in the sum of £350.00.

Background

1. By application dated 7 July 2022 the Applicant applied to the Tribunal for an order under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicant submitted a copy of her tenancy agreement, proof of payment of a deposit, confirmation from the approved tenancy deposit schemes that no deposit had been lodged and copies of text messages between herself and the Respondent’s letting agents in support of the application.
2. Following further correspondence between the Applicant and the Tribunal administration, by Notice of Acceptance dated 9 August 2022 a legal member of the Tribunal accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 5 September 2022.
4. By email dated 29 September 2022 the Respondent's Letting Agents, The Property Leasing Company Limited, Aberdeen, advised the Tribunal it was representing the Respondent.

The Case Management Discussion

5. A CMD was held by teleconference on 19 October 2022. The Applicant attended in person as did the Respondent who was represented by Mr Tarun Dureja from the Respondent's letting agents.
6. The parties agreed that the Applicant commenced a Private Residential Tenancy on 26 February 2022 at a rent of £425.00 per calendar month. It was also agreed that the Applicant paid the Respondents letting agents a deposit of £212.50.at the commencement of the tenancy.
7. Mr Dureja confirmed that due to a clerical error on the part of his company the Applicant's deposit had not been lodged in an approved scheme within the 30 working days provided in the regulations and had not been lodged in a scheme throughout the duration of the tenancy. Mr Dureja said that there was no fault on the part of the Respondent. He went on to say that he was committed to paying any award made by the Tribunal as a result of his company's error.
8. The Respondent queried if any order made by the Tribunal would be against him or his letting agents. The Tribunal explained that as he was the landlord any order would be against him.
9. The Tribunal noted that the letting agents had not repaid the deposit to the Applicant following the end of the tenancy. The Tribunal also noted that there had been a disagreement as to the amount of notice given by the Applicant. Mr Dureja suggested the Applicant had given only given a few days' notice. The Applicant said she had paid rent up to 25 May but had left the property on 9 May 2022 and the property had been re-let the following week. She said she had asked for her deposit to be returned and when it was not had gone to the Citizens Advice Bureau who had advised her to make an application to the Tribunal.
10. Mr Dureja accepted that the deposit had not been lodged in an approved scheme and that the Applicant's application was timeous. He apologised on behalf of his company for the error and explained that the company had £50000.00 of deposits lodged in approved schemes.

Findings in Fact and Law

11. The Applicant commenced a Private Residential tenancy of the property on 26 February 2022 at a rent of £425.00 per month.
12. The Applicant paid a deposit of £212.50 to the Respondent's letting agents at the commencement of the tenancy.
13. The letting agents did not lodge the deposit in an approved scheme throughout the duration of the tenancy.
14. The Applicant left the property on 9 May 2022 but paid rent up to 25 May 2022.
15. The Applicant's deposit has not been returned to her.
16. The Respondent is in breach of Regulation 3 of the 2011 Regulations.
17. The Application is timeous.

Reasons for Decision

18. The parties were agreed that the Applicant had entered into a Private Residential tenancy that commenced on 26 February 2022 and that at the commencement of the tenancy she had paid the Respondent's letting agents a deposit of £212.50.
19. It was also accepted that the deposit was never paid into an approved scheme. Mr Dureja described the failure as being due to a clerical error but did not enlarge upon that. The Tribunal accepted that blame for the failure to lodge the deposit in an approved scheme lay with the letting agents and not with the Respondent personally. However, any sanction must be made against the Respondent and not his letting agent.
20. The Tribunal was satisfied and it was not disputed that the application was made within the three-month time limit specified in Regulation 9 of the 2011 Regulations. The Tribunal must therefore in terms of Regulation 10 impose a sanction upon the Respondent. The Tribunal considered what was a fair, proportionate and just sanction in the circumstances of the case always having regard to the purpose of the Regulations and the gravity of the breach. Each case will depend upon its own facts and in the end of the day the exercise by the Tribunal of its discretion is a balancing exercise. The tenancy was of short duration but the Applicant's deposit was unprotected throughout. The Respondent relied upon the professional expertise of his letting agents to ensure that the 2011 Regulations were followed. Despite a request from the Applicant for her deposit to be returned it was not. The letting agents are well aware of the need to have proper controls in place to ensure that tenants' deposits are secured. Taking everything into account and as it seems that the Applicant has not raised separate proceedings for the return of the deposit the

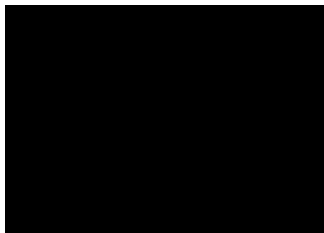
Tribunal considers that an award of £350.00 is appropriate in all the circumstances.

Decision

21. The Tribunal having carefully considered the written representations and documents together with the oral submissions and being satisfied that it has sufficient information before it to make a decision finds the Applicant entitled to an order for payment by the Respondent to the Applicant in the sum of £350.00.

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.



Legal Member/Chair

19 October 2022
Date