



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section of the Housing (Scotland) Act 2014 and on an application made under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/20/0574

Re: Property at 24 Saughton Mains Drive, Edinburgh, EH11 3PJ (“the Property”)

Parties:

Mr Sofian Abdeldayem, 24 Sighthill Street, Edinburgh, EH11 4QQ (“the Applicant”)

Mr Awad Senussi, 775 Flat 8, Ferry Road, Edinburgh, EH4 2TE (“the Respondent”)

**Tribunal Members:
George Clark (Legal Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for payment by the Respondent to the Applicant of the sum of £1,800.

Background

By application, received by the Tribunal on 18 February 2020, the Applicant sought an Order for Payment in respect of the failure of the Respondent to lodge a tenancy deposit in an approved tenancy deposit scheme, as required by Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 6 September 2019. The Tenancy Agreement was signed by the Parties on 22 November 2019. The Applicant also provided the Tribunal with a copy of an email that he had sent to the Respondent on 22 November 2019 in which he advised the Respondent that the deposit had been transferred to his bank account and told the Respondent that he was required by Scottish law to lodge the deposit with “a safe deposit company within 30 calendar days” and provided a link to the website of SafeDeposits Scotland. The Applicant included with the application copies of email exchanges between the Parties on 4 and

5 February 2020, in which the Applicant stated that the Respondent had not lodged the deposit.

On 24 June 2020, the Tribunal advised the Parties of the date and time of a Case Management Discussion and the Respondent was invited to make written representations by 15 July 2020.

On 15 July 2020, the Respondent made written representations to the Tribunal in which he stated that the deposit was held by SafeDeposits Scotland and that it had been released in full to the Applicant at the end of the tenancy.

The Respondent said that he had been out of the country when the tenancy began. On his return, he told the Applicant that he was not intending to stay. The Applicant had then demanded that he sign a lease without fully appreciating what was in it or what it was for. He mentioned to the Applicant that he would use the deposit for his flight tickets back to Libya but reassured him that the deposit would be placed in a secure place. The Respondent stated that he had had no idea about the requirement to place the deposit with a secure third party, but that he had done so following the discussion about this being necessary. The deposit had been returned in full at the request of the Respondent, even though, he contended, the Applicant owed him £1,200 in rent. The Respondent made representations about other issues between the Parties. These were not relevant to the matter of the deposit so were not considered further by the Tribunal.

On 22 July 2020, the Applicant provided the Tribunal with evidence from SafeDeposits Scotland that the deposit had been secured with them on 9 March 2020. He disputed the Respondent's claim to have been unaware of the requirement to lodge the deposit in an approved tenancy deposit scheme and reminded the Tribunal that he had emailed the Respondent on the day he paid the deposit, to let the Respondent know that it must be lodged in a tenancy deposit scheme.

Case Management Discussion

A Case Management Discussion was held by way of a telephone conference call on the afternoon of 7 August 2020. Both Parties participated in the telephone conference and had nothing new to add to their written representations. The Respondent implied that the Applicant was being opportunistic.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (procedure) Regulations provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without Hearing.

Under Regulation 3(1) of The Tenancy Deposits Scheme (Scotland) Regulations 2011 ("the Regulations"), a landlord must, within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme and provide the tenant with certain information required under Regulation 42, and Regulation 10 states that if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal **must** order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit.

The Tribunal considered carefully all the evidence, written and oral, before it. This was an unusual situation, in that the tenancy had been running for more than two months before the Tenancy Agreement was signed and the deposit paid. The Tribunal noted that the deposit had been paid on 22 November 2019, but that it had not been lodged

in a tenancy deposit scheme until 9 March 2020. It should have been lodged in such a scheme within 30 working days, which the Tribunal calculated was by 7 January 2020, excluding Christmas and New Year Public Holidays. As a result, the Applicant's money had been at risk for a period of two months.

The Tribunal did not accept the Respondent's claim that he had been unaware of the requirement to lodge the deposit in an approved tenancy deposit scheme. That requirement had been specifically drawn to his attention by the Applicant in the email sent on the day the deposit was paid. The Applicant had also referred, in his email to the Respondent of 4 February 2020, to the fact that the deposit had not been lodged. It was not lodged until almost five weeks after that second "warning". The Respondent may not have read the Tenancy Agreement properly before signing it and may, therefore, have been unaware that it contained provisions regarding the lodging of the deposit, but the requirement to lodge tenancy deposits in an approved scheme is a matter of law, not of contract and ignorance of the law is no excuse. The view of the Tribunal was that the Respondent had taken the decision to hold on to the deposit and had not lodged in in one of the schemes for more than three months. That was a serious failure on the part of the Respondent and was not a mere oversight. The Tribunal noted, however, that the Applicant's money was at risk for a relatively short period of time and that the Respondent had authorised release of the full deposit when the tenancy came to an end. The Tribunal made no finding as to whether the Respondent would have been entitled to seek to retain any part of the deposit or as to what the likely outcome of such a claim would have been.

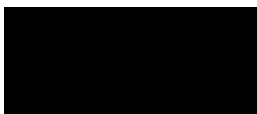
Having considered all the facts and circumstances and all the evidence before it, the Tribunal decided that a fair, just and proportionate sanction would be to order the Respondent to pay to the Applicant the sum of £1,800.

Decision

The Tribunal determined that the application should be decided without a Hearing and made an Order for payment by the Respondent to the Applicant of the sum of £1,800.

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.



07 August 2020

Legal Member/Chair