



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

Chamber Ref: FTS/HPC/PR/22/0836

Re: Property at 10 Glendevon Drive, Stirling, FK8 1FG ("the Property")

Parties:

Ms Paulina Porubska, 2 South Hirn, Crathes, Banchory, AB31 5QT ("the Applicant")

Mr Siya Yadav, 54 Canmore Street, Glasgow, G31 4PU ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member)

Decision

At the Case Management Discussion ("CMD") which took place by telephone conference on 31 May 2022 the Applicant was in attendance and was represented by Mr Ewan Stewart. The Respondent was also in attendance.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:-

Prior to the CMD the Tribunal received from the Respondent a written response to the application by email dated 27 April 2022.

Prior to the CMD the Tribunal also received from the Applicant and her representative, Mr Stewart, an email dated 20 May 2022.

The following issues are not in dispute between the parties:-

- The Respondent leased the Property to the Applicant in terms of a Private Residential Tenancy Agreement dated 26 July 2021 ("the PRT").
- The PRT commenced on 1 August 2021.
- At the outset of the PRT the Applicant, at the request of the Respondent, paid to the Respondent a deposit of £300. Payment was made by bank transfer late in July 2021.
- The PRT ended on 31 December 2021.
- The Respondent refunded the deposit to the Applicant in full by bank transfer on or around 2 January 2022.

- The Respondent did not, at any point during the tenancy or subsequently, pay the deposit into an approved scheme as required in terms of Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”).

The Case Management Discussion

In addition to the application and the written representations of the parties, the Tribunal had regard to the following oral submissions:-

For the Applicant:-

- i. That the Applicant’s deposit was unprotected for the duration of the PRT and was at risk.
- ii. The Respondent previously had tenants in the property. In particular when the Applicant moved into the Property the possessions of a previous tenant were present and 2 other tenants were in occupation.
- iii. That the Respondent told the Applicant that he owns another property downstairs in the same building as the Property.
- iv. That a friend of the Applicant also let a property from the Respondent but the address was not known.

For the Respondent:-

- i. That the Respondent bought the Property in 2020.
- ii. That his failure to lodge the deposit into an approved scheme in terms of Regulations was a “slip of the mind”.
- iii. That he was aware of the Regulations and completely forgot to put the funds into an approved scheme.
- iv. That at no point was the deposit at risk. The funds were held in a separate account and refunded in full at the end of the tenancy.
- v. That the Respondent was not aware of the adjudication process available by virtue of approved schemes.
- vi. That he had rented the Property previously to 2 other tenants whose deposits were paid into an approved scheme.
- vii. That he owns the Property and one other in the same building as well as his own home which he does not rent out.
- viii. The other property in the building was also bought in 2020 and is rented out to one tenant. His deposit is in an approved scheme.
- ix. He is a new landlord and does not “know about these things”.

Reasons for Decision

The Tribunal takes a landlord’s failure to comply with the Regulations very seriously.

In terms of Regulation 10 of the Regulations it is stated:-

“If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal -

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit;”

Having admitted a breach of the Regulations the Tribunal is obliged to make an order

against the Respondent.

In determining the amount payable by the Respondent to the Applicant the Tribunal took into account the following:-

- i. That the Respondent was aware of the Regulations yet failed to comply with them.
- ii. That the deposit was unprotected for the entire duration of the PRT, namely 5 months.
- iii. That the Applicant was deprived of the adjudication process operated by an approved scheme operating under the Regulations relative to the return of the deposit should it have been required.
- iv. That the Respondent is a commercial landlord having one other leased property and experience of renting out residential properties.
- v. That the Respondent's failure to comply with the Regulations is not excusable.
- vi. That the Respondent refunded the deposit to the Applicant in full within only 2 days of the tenancy ending.

The Tribunal therefore determined that, having regard to the foregoing, the Respondent must pay to the Applicant a sum of £450 by way of a penalty for his failure to comply with the Regulations, being the 1.5 times the deposit. Such a penalty is proportionate, fair and just and reflects the Tribunal's view that the Respondent's failure to comply with the Regulations is a serious matter.

Decision

The Respondent is ordered to pay to the Applicant a sum of £450.

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.

Gillian Buchanan

Legal Member/Chair

31 May 2022
Date