



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

Chamber Ref: FTS/HPC/PR/20/2233

Re: Property at South Barbeth Cottage, New Abbey, Dumfriesshire, DG2 8DB (“the Property”)

Parties:

Mr Scott Wright, South Barbeth Cottage, New Abbey, Dumfriesshire, DG2 8DB (“the Applicant”)

Mr Hope Vere Anderson, Mrs Erika Anderson, Barbeth House, New Abbey, Dumfriesshire, DG2 8DB (“the Respondents”)

Tribunal Members:

Alan Strain (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondents pay the sum of £1,425 to the Applicant

Background

This is an application under Regulation 9 of the Regulations and Rule 103 of ***The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Rules)*** in respect of (1) an alleged failure to protect a tenancy deposit; and (2) to provide information to the Applicant as required under Regulation 42 of the Regulations.

The Tribunal had regard to the following documents:

1. Application received 21 October 2020;
2. Short Assured Tenancy Agreement (**SAT**) commencing 28 April 2014;
3. Receipt for deposit dated 10 April 2014;

4. Safe Deposit Scotland (**SDS**) correspondence confirming deposit protected from 1 July 2020;
5. Sheriff Officer Certificate of Service of CMD Notification upon the Respondents dated 2 December 2020.

Case Management Discussion (CMD)

The CMD proceeded by conference call in light of the current situation.

The Applicant did not participate but was represented by this solicitor. The Respondents did not participate and were not represented.

The Tribunal delayed the start of the CMD to see if the Respondents would dial in – they did not.

The Tribunal were satisfied that the Respondents had received notification of the Case Management Discussion and that the Tribunal could determine the matter if it considered it had sufficient information to do so and the procedure was fair. The notification also advised the Respondents that they should attend and the Tribunal could determine the matter in absence if they did not.

The Tribunal then heard from the Applicant's solicitor. The Applicant's position was that the deposit was not protected for 6 years 3 months, the Respondents were not inexperienced landlords as they let other Properties and the Applicant was not the first tenant in the Property. The Applicant sought the maximum award in light of the circumstances.

Decision and Reasons

The Tribunal considered that it had sufficient information to determine the matter at this stage and that the procedure was fair.

The Tribunal considered the evidence before it and made the following findings in fact:

1. The Parties entered into the SAT commencing 28 April 2014;
2. The Applicant paid a deposit of £475 on 10 April 2014 which was not protected until 1 July 2020;
3. The deposit was unprotected for a period of nearly 6 years 3 months;
4. The Respondents are experienced landlords who let other Properties in addition to this Property and the Applicant was not their first tenant.
5. The Respondents had notification of the CMD served on them by Sheriff Officers on 2 December 2020 and had not lodged any written submissions.

It was clear that the tenancy deposit had not been protected in breach of the regulations. Having made that finding it then fell to the Tribunal to determine what sanction should be made in respect of the breach. In so doing the Tribunal considered, referred to and adopted the approach of the court in ***Russell-Smith and others v Uchegbu [2016] SC EDIN 64***. 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 Tribunal weighed all the factors and found it be of significance that the deposit was unprotected for nearly 6 years 3 months; the Respondents were experienced landlords who should have knowledge of the requirement to protect the deposit; the Respondents had provided no explanation for their failure to protect the deposit and had not participated in the CMD despite having received notification.

In the circumstances the Tribunal considered the breach to be significant and an award to be justified. The Tribunal considered the sum of £1,425 to be a fair, proportionate and just sanction in the circumstances of the case.

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.


Alan Strain

11 January 2021

Legal Member/Chair

Date