

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/PR/18/2189

Re: Property at 22/4 Restalrig Drive, Edinburgh, EH7 6FY ("the Property")

Parties:

Mr Georgi Haladzhov, 2/8 Magdalene Avenue, Edinburgh, EH15 3BP ("the Applicant")

Mr Max Templeton, Mrs Alison Templeton, 25 Scone Gardens, Edinburgh, EH8 7DQ ("the Respondent")

Tribunal Members:

Colin Dunipace (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondents failed to comply with their duty as Landlords in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") as amended by the Housing (Scotland) Act 2014 (Consequential Provisions) Order 2017 by failing to pay the Applicant's Tenancy Deposit to the scheme administrator of an Approved Tenancy Deposit Scheme, and grants and Order against the Respondents for payment by the Respondents to the Applicant in the sum of Eight Hundred and Ninety Two Pounds (£892) Sterling.

Background

1. By application of 17 August 2018 the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property) Chamber for an order for payment where the landlord had not paid a deposit into an approved scheme in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (as

amended). In support of his application the Applicant submitted a copy of the Short Term Assured Tenancy agreement between the parties dated 19 April 2017, said tenancy commencing on 1 May 2017. In terms of clause 5 of this Agreement the Applicant agreed to pay the sum of £892 to the Respondents.

2. On 4 October 2018 the Tribunal issued a Notice of Acceptance of the Application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").
3. A Case Management Discussion took place on 29 November 2018 at which time the Discussion was adjourned and a full Hearing was scheduled for 8 March 2019 in George House, 126 George Street, Edinburgh.
4. Prior to the Hearing the Tribunal received detailed written submissions from the Respondents on 17 January 2019. The Tribunal also received written submissions from the Applicant on 23 January 2019.

The Hearing

1. The Tribunal proceeded with this Hearing on 8 March 2019. The Applicant was present and both Respondents were also both present.
2. Oral submissions were made by both parties. In support of his Application the Applicant advised that he had entered into a Short Assured Tenancy in relation to the property on 19 April 2017. The Applicant indicated that he dealt with a letting agency in relation to the Tenancy Agreement, namely CMC Lettings. The Applicant stated that in terms of the aforementioned Agreement that he paid the sum of £892 to this company in relation to the deposit due. The Applicant advised that he paid this sum by direct bank transfer to CMC Letting prior to entering the lease. The Applicant stated that whilst he did not have a receipt in relation to this payment, that it had been made by him. The Applicant stated that this payment had been made prior to 1 May 2017.
3. The Applicant stated that the tenancy came to an end on 1 August 2018 and he vacated the property on 17 June 2018. This was confirmed by the documentation lodged by the Respondents. The Applicant stated that following the termination of the lease that he took steps to have his deposit returned to him. The Applicant advised that he contacted CMC Lettings on a number of occasions but was unable to secure the return of his deposit. The Applicant stated that he telephoned and emailed the company and also attended in person to seek the return of his deposit but that this payment was not returned to him at any time. The Applicant thereafter advised that he made contact with the three Tenancy Deposit Scheme administrators who confirmed in turn that the deposit had not been lodged in an approved scheme. The Applicant indicated that he was seeking the return of his deposit and also a compensatory payment in relation to the inconvenience occasioned to him as a result of his attempts to recover the deposit. The Applicant also indicated

that he had incurred other financial losses as a result of losing work. The Applicant was unable to produce any vouching in relation to financial losses.

4. The Respondents made submissions on their own behalf. The Respondents indicated that the property in question was their own rental property and that it had been their former family home. They advised that following the decision to let out this property that they were referred to a Letting Agent who managed the leasing of this property. The Respondents further stated that this company was subject to re-structuring but that this company, CMC Property, were responsible for arranging the lease between themselves and the Applicant at the time when this Short Assured Tenancy was arranged. The Respondents advised that they were not personally involved in arranging this lease, and that they had paid a fee of £300 to Property, and that they also paid a monthly management fee to this company. The Respondents confirmed that they had no direct contact with the Applicant. The Respondents also confirmed that they had expected that this company would attend to the requirement to pay the deposit into an approved scheme. The Respondents stated that when the property had been recovered by them that there were a number of issues with the property. It was explained that there was damage to a number of fixtures and also smoke damage to the structure of the property, and that they had intended to deduct the cost of this damage from the deposit which had been paid by the Applicant. The Respondents advised that they had made further investigations with CMC Property and had understood that this company was now in liquidation. The Applicants had never received the deposit, although they did not dispute that the sum of £892 had been paid as a deposit by the Applicant.

Findings in Fact

1. The parties entered into a Short Assured Tenancy in respect of the property at 22/4 Restalrig Drive, Edinburgh on 1 May 2017. This Tenancy came to an end on 1 August 2018. The Respondents were represented in relation to this process by CMC Property.
2. At the outset of the Short Assured Tenancy the applicant paid the sum of £892 to CMC Property in relation to the deposit due in terms of this lease.
3. The Applicant's deposit was not protected by being paid into an appropriate Tenancy Deposit Scheme.
4. The sum paid by the Applicant was paid to CMC Property and was not passed on to the Respondents.
5. To date the Applicant's deposit payment has not been returned to him.

Findings in Fact and Law

1. The Tribunal was satisfied that the Respondents did not comply with their duties in terms of Regulation 3 of the 2011 Regulations in respect of the Applicant's deposit of £892.
2. Being so satisfied the Tribunal must make an Order in terms of Regulation 10 of the Regulations for an amount not exceeding three times the amount of the tenancy deposit.

Reasons for Decision

1. In reaching its decision the Tribunal took account of the written and oral submissions of the Applicant and of the Respondents. The Tribunal accepted the evidence of the Applicant to the effect that when entering into the Short Assured Tenancy that he paid the sum of £892 by way of his deposit to CMC Property. The Tribunal also accepted that this sum was not paid into a protected Deposit Scheme, and also that to date that this sum has not been repaid to the Applicant.
2. The Tribunal also accepted that the Respondents had employed the company of CMC Property to act as their Letting Agents in relation to the lease of the subject property. The Tribunal accepted also that the Respondents were acting entirely in good faith and that they understood that they had instructed a reputable company to act on their behalf in relation to the management of the property. The Respondents took no part in the management of this property and this was left entirely to the aforementioned company. It was also accepted by the Tribunal that the Respondents understood that all administrative requirements had been attended to by this company, and that this would have included the protection of the Applicant's deposit in one of the Approved Schemes. The Respondents indicated that there had been damage occasioned to their property by the Applicant and they sought to offset the amount of this damage against any sums due to the Applicant. The Respondents were however advised that any such application could not be considered in the context of these proceedings.
3. The Tribunal noted that whilst the Respondents had acted in good faith when instructing what they understood were reputable Letting Agents to manage their property. It was not an unreasonable belief on their part to understand that the deposit would have been paid in an Approved Scheme. Unfortunately for the respondents the terms of Regulation 3 of the 2011 Regulations makes clear that the obligation to pay the deposit to the scheme administrator of an Approved Scheme within 30 days of the beginning of the tenancy. The responsibility to pay the deposit into an Approved Scheme lies on the landlord and the obligations in this regard cannot be passed to another party, in this case CMC Property. Put simply the landlords cannot subcontract their obligations in this regard to another party. Accordingly and whilst not doubting that the Respondents have acted in good faith throughout this matter, they

remain responsible for the fact that the deposit was not paid into an Approved Scheme.

Decision

Having considered the matter in detail the Tribunal determined to take account of the background circumstances and to make an Order for payment of the sum of £892 by the Respondents 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.

Mr Colin Dunipace

Legal Chair

8/3/19

Date