



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

Chamber Ref: FTS/HPC/PR/22/3090

Re: Property at 19 Queensberry Beeches, Thornhill, DG3 5DD (“the Property”)

Parties:

Mr Andrew White and Mrs Anges White, 12 Longmeadow Place, Annan, DG12 6FS (“the Applicants”)

Mrs Karen Coyne, Merchiston Castle School, 294 Colinton Road, Edinburgh, EH13 0PU (“the Respondent”)

Tribunal Members:

Gillian Buchanan (Legal Member)

Decision

At the Case Management Discussion (“CMD”) which took place by telephone conference on 21 November 2022 the Applicants and the Respondent were both present. The Respondent was represented by Mr Allan McMillan, Managing Partner of GM Thomson & Co, Dumfries.

Prior to the CMD the Tribunal received:-

- i. Emails from Mr Allan McMillan of GM Thomson & Co dated 14 October and 11 November 2022; and
- ii. An email from the Applicants dated 13 November 2022.

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

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

- The Respondent leased the Property to the Applicants in terms of a Private Residential Tenancy Agreement dated 1 July 2020 (“the PRT”).
- Throughout, the Respondent’s Letting Agent, GM Thomson & Co acted on her behalf.
- The PRT started on 13 July 2020.

- The PRT required that the Applicants pay a deposit of £750 which they paid to GM Thomson & Co.
- GM Thomson & Co 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 Applicants removed from the Property on 12 August 2022.
- GM Thomson & Co deducted £72.60 from the deposit and refunded the balance to the Applicants on 19 August 2022.

The foregoing matters were not in dispute.

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 Applicants:

- i. On 5 August 2022 the Applicants asked GM Thomson & Co about the release of their deposit and were advised to contact the approved scheme, Letting Protection Service Scotland (“LPSS”), with their ID number. The Applicants had not been given an ID number.
- ii. The Applicants phoned LPSS on a number of occasions and were eventually advised that the deposit was not held there.
- iii. The Applicants then emailed GM Thomson & Co for an explanation. No response was forthcoming.
- iv. The Applicants received a call from GM Thomson & Co on 8 August 2022 advising that the deposit had been found in GM Thomson & Co’s client account.
- v. The Applicants were not given the opportunity to carry out the repairs to which the deduction from the deposit of £72.60 relates.
- vi. GM Thomson & Co benefitted from interest accrued on the deposit whilst held in their client account.

For the Respondent

- i. At the time when the deposit was paid by the Applicants the support staff of GM Thomson & Co were not working from the office and had been placed on furlough. Normally 22 staff members would deal with GM Thomson & Co’s portfolio of around 600 residential properties, 12 agricultural estates, various other factored properties and 5 or 6 residents’ associations. At that time Mr McMillan was maintaining the properties alone with one letting agent working from home.
- ii. There were no other deposits paid but not lodged into approved schemes.
- iii. GM Thomson & Co’s client account is not interest bearing.
- iv. Mr McMillan did not receive the Applicants’ email of 5 August which was dealt with by the property department. He apologised for the absence of a response.
- v. Only Mr McMillan has access to GM Thomson & Co’s LPSS account and on checking it was discovered the deposit had not been lodged. The fault was that of Mr McMillan.
- vi. A pre-exit inspection was carried out on 4 August 2022 and an exit inspection on 15 August 2022. Minor items of repair were identified and a

quote obtained for remedial costs and agreed with the Applicants. These sums were deducted prior to the balance of the deposit being remitted to the Applicants.

Reasons for Decision

The Tribunal takes a 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;"

Notwithstanding some trivial differences between the submissions made by the parties relative to certain factual matters there was no dissent on the key issues relative to the deposit. Indeed, Mr McMillan admitted a breach of the Regulations by failing to lodge the deposit into an approved scheme. On that basis 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 deposit has been unprotected for the entire duration of the PRT.
- ii. That the Applicants ought to have had the benefit of the adjudication process operated by an approved scheme operating under the Regulations relative to the return of the deposit at the end of the PRT.
- iii. That the Respondent delegated compliance with the Regulations to GM Thomson & Co, a substantial letting agent.
- iv. It is the Respondent's responsibility to be aware of and ensure compliance with the Regulations.
- v. That the failure to comply with the Regulations is not excusable.
- vi. That the failure to adhere to the terms of the Regulations sits towards the most serious end of the scale of penalties available to the Tribunal in terms of the Regulations.
- vii. That GM Thomson & Co's operation was significantly affected by COVID19 with the bulk of the staff being on furlough.

The Tribunal therefore determined that, having regard to the foregoing, the Respondent must pay to the Applicant a sum of £1,500.00 by way of a penalty for failure to comply with the Regulations, being two times the deposit. Such a penalty is proportionate, fair and just and reflects the Tribunal's view that the failure to comply with the Regulations is a serious matter.

Decision

The Respondent is ordered to pay to the Applicants a sum of £1,500.00.

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

21 November 2022

Date