



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

Chamber Ref: FTS/HPC/PR/19/0026

Re: Property at Flat 0/2, 1757 Great Western Road, Anniesland, Glasgow, G13 2UX (“the Property”)

Parties:

Miss Helene McHugh, 41 Gairbraid Court, Maryhill, Glasgow, G20 8HU (“the Applicant”)

Mr Niall Fraser, 2/1, 104 Clarence Drive, Glasgow, G12 9RW (“the Respondent”)

Tribunal Members:

Lynsey MacDonald (Legal Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent did not comply with the duties in Regulation 3 of the 2011 Regulations and ordered the Respondent to pay to the Applicant the amount of £120 (one hundred and twenty pounds).

1. Background

- 1.1.** The Applicant sought an order for payment of compensation in respect of the Respondent’s failure to pay her tenancy deposit into an approved scheme. An application in terms of Rule 103 (Application for order for payment where landlord has not paid the deposit into an approved scheme) was received by the Tribunal on 7th January 2019 and was accepted on 29th January 2019.
- 1.2.** In support of the application the Applicant lodged a copy of emails. The Applicant subsequently lodged copies of further emails and messages, and a rent payment schedule.

- 1.3. The Tribunal fixed a Case Management Discussion for 14th March 2019, at Glasgow.
- 1.4. The Case Management Discussion was intimated to parties. Both parties were advised that they were required to attend the Case Management Discussion, and were informed that the Tribunal could at the Case Management Discussion make any decision on the application that could be made at the full Hearing, if the Tribunal had sufficient information and considered the procedure to have been fair.

2. The Case Management Discussion

- 2.1. The Respondent attended the Case Management Discussion, and represented himself.
- 2.2. The Applicant failed to attend the Case Management Discussion. It transpired that on 24th February 2019 the Applicant had written to the Tribunal and indicate that she would not be attending the Case Management Discussion, or any further hearings. The Applicant requested that the Hearing proceed on the basis of a written statement of that date, together with the documents that she had previously lodged.
- 2.3. The Respondent had no objection to proceeding in the absence of the Applicant. The Tribunal was satisfied that the Applicant's failure to attend the Case Management Discussion in person was deliberate and informed, and considered that it was fair to hear the Case Management Discussion in the absence of the Applicant.
- 2.4. In her written documentation the Applicant indicated that she had entered into a tenancy agreement with the Respondent. The Rent was paid at £360 per calendar month, and was paid on time. The Applicant paid a £360 deposit. The Applicant did not receive a written tenancy agreement, and did not receive any documentation to indicate that her deposit had been paid into an approved scheme. After difficulties during the tenancy, principally between the Applicant and her co-tenant, the Respondent ended the tenancy. The Applicant left the property on 31st January 2019. On the same date, the Respondent returned the Applicant's deposit to her.
- 2.5. The Respondent gave evidence on his own behalf. The Respondent accepted that he and the Applicant had entered into a tenancy agreement on 1st November 2018. The Respondent accepted that he had received a deposit of £360 from the Applicant and that he had not paid that deposit into an approved scheme. The Respondent accepted that the tenancy ended as a result of problems principally between the Applicant and her co-tenant. The Respondent confirmed that the Applicant's deposit had been returned to her on 31st January 2019, and

provided vouching of same in the form of a print out of a bank transaction.

- 2.6. The Respondent acknowledged that he had not complied with the Regulations, and apologised for that. He indicated that he bought the property last year, and was unfamiliar with the procedures involved in renting a property. The Respondent had become aware of the duties of landlords and was taking steps to remedy mistakes he had made. During the course of the Applicant's tenancy he had registered as a landlord. The Respondent provided the Tribunal with his landlord registration number.
- 2.7. The Respondent acknowledged that the Tribunal was required to make an order in respect of his failure to comply with the Regulations. The Respondent asked the Tribunal to take into consideration that he had repeatedly made it clear to the Applicant that he had no intention of depriving her of her deposit; that he had returned the deposit to the Applicant, in full, on the agreed date; that the Applicant had suffered no actual loss; that the property is currently vacant; that at present he held no other deposits in contravention of the rules; that if in the future he received a tenancy deposit he would ensure that it is paid into an approved scheme, although he hopes to sell the property;
- 2.8. The Tribunal was satisfied that there was sufficient information before it to determine the application, and that there was no need for a further hearing.

3. Findings in Fact

- 3.1. The Applicant and the Respondent entered into a tenancy agreement on 1st November 2018.
- 3.2. There was no written tenancy agreement.
- 3.3. The Applicant paid a deposit of £360 to the Respondent.
- 3.4. The Respondent required to lodge the deposit into an approved scheme by 13th December 2018, that being thirty working days after the start of the tenancy.
- 3.5. The Respondent failed to lodge the tenancy deposit in an approved scheme.
- 3.6. On 27th December 2018 the Respondent gave notice to the Applicant to leave the property by 31st January 2019.
- 3.7. On 31st January 2019 the Applicant vacated the property. On the same day, the Respondent returned the Applicant's deposit to her.

4. Reasons for Decision

- 4.1. The tribunal proceeded on the basis of the written documents which had previously been lodged, together with oral evidence and submissions from the Respondent. In the main, there was no dispute between the parties.
- 4.2. The Tribunal found the Respondent to be credible and reliable. His evidence was supported by the vouching of the return of the Applicant's deposit, the provision of a landlord registration number, and the emails between him and Applicant.
- 4.3. In determining the level of compensation to be paid to the Applicant, the Tribunal took into consideration:
 - (a) The period for which the deposit was unprotected was short;
 - (b) The Applicant had suffered no loss as a result of the deposit being unprotected;
 - (c) The Respondent had returned the deposit at the end of the tenancy;
 - (d) The Respondent had remained in communication with the Applicant, and had reassured her that her deposit would be repaid to her;
 - (e) The Respondent had cooperated with the proceedings before the Tribunal, and had acknowledged the errors that he had made;
 - (f) The Respondent had learned from his error and would not repeat it.
- 4.4. The Tribunal noted that the Respondent had failed to register as a landlord prior to entering into a tenancy agreement with the Applicant. In ordinary course the Tribunal may have considered that this were an aggravating factor. However, the Tribunal also noted that upon realising his duty to register as a landlord, the Respondent did so. Whilst ignorance of the law is no excuse, the Tribunal considered that the foregoing demonstrated that the Respondent's indication that he would in the future comply with the Tenancy Deposit regulations was genuine.
- 4.5. The Tribunal did not consider the behaviour of the Applicant's co-tenant relevant to the question of the deposit being paid into an approved scheme.
- 4.6. The Tribunal did not consider that there were any other factors relevant to the question of compensation.

5. Decision

The order for payment of compensation is granted in the amount of £120, which represents one third the amount of the deposit.

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.

Lynsey MacDonald

Legal Member

Date

14/03/19