

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 the Housing (Scotland) Act 2006 section 121 and the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/18/1802

Re: Property at 91/4 London Road, Edinburgh EH7 5TT (“the Property”)

Parties:

Mr Lorenzo Martinez Gonzalez and Mrs Carmen Manzano Noguera, 22/8 Moat Terrace, Edinburgh EH14 1PS (“the Applicants”)

Ms Marion Smith, 34 Northfield Park, Edinburgh EH8 7QX (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Landlord is in breach of her obligations in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“Regulation 3”). The Respondent shall make payment to the Applicants in the sum of SIX HUNDRED POUNDS (£600) STIRLING

Background

1. The Applicants and the Respondent entered into a Short Assured Tenancy which started on 21st March 2017 for a 6 month period until 21st September 2017. The tenancy was thereafter continued on a monthly basis.
2. The Applicants paid a £600 deposit on 11th March 2017. Gnieska Mietkiewicz sign a receipt on behalf of the Respondent. A copy of the receipt is enclosed within the paperwork submitted with the application.
3. The Tribunal received an application from the Applicants in terms of Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017 on 17th July 2018.

4. The Applicant advised in the application that the tenancy had commenced on 1st February 2018. The Landlord did not place the deposit in any scheme or provide details when asked regarding the placing of the deposit in any scheme.
5. On 23rd April 2018 the Respondent wrote to the First Named Applicant issuing a 2 month notice period for removal with a Notice to Quit and AT6. The notice stated that the Applicants leave the Property by 24th June 2018. The Applicants left the Property on 24th June 2018.
6. Along with the application the Applicants submitted email correspondence between 23rd April 2018 and 27th June 2018. These emails discussed that there had been damage to the property that needed to be deducted from the deposit. The Applicants disputed that this amount was owed.
7. The Respondent wrote to the Housing and Property Chamber on 14th September 2018 stating that she had not paid the deposit into a registered deposit scheme due to her being abroad and having an agent deal with the matter on her behalf.
8. The Respondent received notification of the application with submission by letter of 3rd September 2018. This was delivered by Sheriff Officers by letterbox delivery on 4th September 2018. Letter dated 3rd September 2018 from the Housing and Property Chamber specified the date, time and place of the Case Management Discussion ("CMD").

The Case Management Discussion

9. The Applicants and Respondent attend the Tribunal. The Applicants had requested an interpreter to attend but this had not been actioned. The First named Applicant stated that he was able to speak English but had concerns about advising the Tribunal on complex matters. The Tribunal informed him that the hearing would be fixed for another date. The Respondent wished to state her case. The First Named Person, on hearing the evidence of the Respondent, was content to proceed with the case without an interpreter.
10. It was explained to both parties that the purpose of the CMD was to look at matters arising to the deposit being lodged within a registered Tenancy Deposit Scheme. Both parties wanted to raise issues regarding the return of the deposit and whether there had been damage to the property. Both parties accepted that this was not a matter for this CMD.
11. The Respondent confirmed that she had not put the deposit into a registered Tenancy Deposit Scheme. She informed the Tribunal that the deposit was taken by someone acting as her agent. This was the previous tenant in the Property. The Respondent was out of the country for several months during the time that the deposit was taken. She stated to the Tribunal that it has been an oversight not to lodge the deposit in a registered scheme. She has several

properties and an account with My Deposit Scotland. She was asked if was willing to put the deposit into a registered deposit scheme. She confirmed that she would be able to do this later in the day. The Tribunal will issue a direction as part of the order to ensure that the deposit is deposited in a registered deposit scheme. The Respondent accepted that she had erred in not putting the deposit into a registered deposit scheme.

Accordingly the Tribunal finds in fact:

12. The Applicants paid a deposit of £600 on 11th March 2017 in respect of a tenancy in the property owned by the Respondent at 91/4 London Road, Edinburgh EH14 1PS.
13. The start date of the tenancy was 21st March 2017 for a period of 6 months thereafter was continued for a month to month basis.
14. The end date of the tenancy was 24th June 2018.
15. The Applicants did not receive notice from the Respondent of details of the rent deposit scheme into which the deposit has been paid.
16. No evidence has been provided by the Respondent that she has met her duties in terms of Regulation 3.
17. The Respondent provided notice to the Applicants on 23rd April 2018 of her intention to end the tenancy effective from 24th June 2018. The Applicants removed themselves from the property by this dated.
18. The Deposit has not been repaid to the Applicants despite their requests.

Reasons for Decision

19. The Respondent has a duty to lodge the deposit within 30 working days of the tenancy beginning under Regulation 3. The Respondent has failed to comply with her obligations under that regulation. The Respondent was forthcoming to the Tribunal that she had not met her obligation under Regulation 3. She confirmed that she had erred in doing so. Given that she had confirmed his position the Tribunal was content that a fine of one times the amount of the deposit was appropriate.
20. Matters are still on going between parties regarding the return of the deposit. The Respondent is ordered to lodge the deposit in a Tenancy Deposit Scheme by 28th September 2018 in order that arbitration can take place regarding the return of the deposit should it be necessary. Ms Smith confirmed that she was willing to do this and would ensure that it was done.

Decision

21. The Respondent is to pay to the Appellants the amount of £600. The Respondent is also directed to lodge receipt of payment of the deposit within the scheme within 7 working days of this Tribunal.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Gabrielle Miller

Legal |

Date

20 Sept 18