



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 and Regulations 3 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/19/2643

Re: Property at 1-5 Russell Gardens, Edinburgh, Midlothian, EH12 5PG (“the Property”)

Parties:

Mr Jeffrey McQuiggan, Ms Kristen Funk, 5 South George St, Dundee, Angus, DD1 2QD; 5 South George St, Dundee, Angus, DD1 2QD (“the Applicants”)

Mr Anthony William Honeyman, Mr Craig Phillip Honeyman, Ms Diane Honeyman, present whereabouts unknown (“the Respondents”)

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Payment by the Respondents to the Applicants of the sum of Nine Hundred Pounds (£900)

Background

By application, received by the Tribunal on 26 August 2019, the Applicants sought an Order for Payment in respect of the failure by the Respondents to lodge a deposit in an approved Tenancy Deposit Scheme.

The Applicants stated that they had paid a deposit of £300 in cash at the commencement of a tenancy of a room in the Property on 4 April 2019. The monthly rent was £600. The Respondents had not complied with the obligation under Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) to provide the Applicants with the information required under Regulation 42 of the 2011 Regulations, including the name and contact details of the scheme administrator of the tenancy deposit scheme to which the deposit was paid.

The Applicants stated that they had paid the deposit to Anthony William Honeyman and had had regular dealings with his daughter and son, Ms Diane Honeyman and Mr Craig Honeyman. They had originally rented a room at 6-17 Portland Gardens, Edinburgh through Airbnb, where the Respondents lived. They had then agreed to take a tenancy of a room at the Property from 4 April 2019. They had not been given a written tenancy agreement. They had given notice to the Respondents on 14 May 2019 and the checkout visit on 25 June 2019 was carried out by Ms Diane Honeyman, who advised them that the deposit would be repaid to them that evening. The Applicants had contacted Ms Honeyman two days later and she had said she would talk to her father about the deposit, but the Applicants had heard nothing from the Respondents since then.

The application was accompanied by copies of bank statements, showing rental payments to the account of a Paul Stott and cash withdrawals which coincided with the payments of the first month's rent and the deposit which the Applicant stated had been paid in cash. The Applicants also provided copies of text messages in which Ms Diane Honeyman confirmed that the monthly rent payments should be made to the account of Paul Stott, details of which the Applicants already had, and later text messages in June 2019 in which the Applicants were chasing up the repayment of the deposit.

In response to an enquiry from the Tribunal, whose own enquiries indicated that the Property was owned by SDR Property Company Limited, the Applicants stated that they had no knowledge of the company and that all their dealings had been with the named Respondents.

On 10 December 2019, the Tribunal advised the Parties of the date, time and place for a Case Management Discussion. Intimation to the Respondents was by advertisement on the Tribunal's website between 10 December 2019 and 15 January 2020, as intimation by service of papers on the Respondents at the address provided by the Applicants had been unsuccessful.

Case Management Discussion

A Case Management Discussion was held at George House, 126 George Street, Edinburgh on the morning of 15 January 2020. The Applicants were present. The Respondents were neither present nor represented. The Applicants confirmed that the Respondents had not resided at the Property during the period of their tenancy and asked the Tribunal to decide the application without a Hearing.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing. The Tribunal was satisfied that it had before it all the information and documentation it required and that it would decide the application without a Hearing.

Regulation 3(1) of the 2011 Regulations stipulates that a landlord must, within 30 working days of the beginning of the tenancy, pay the deposit to the scheme administrator of an approved scheme and provide the tenant with the information required under Regulation 42. This includes providing the name and contact details of the scheme administrator of the tenancy deposit scheme to which the deposit has been paid.

The Tribunal was satisfied that the tenancy met the requirements of Regulation 3, in that the Respondents had received a tenancy deposit in connection with a relevant tenancy, namely one in respect of which the landlord is a relevant person (i.e. not a resident landlord) and by virtue of which a house is occupied by an unconnected person. Accordingly, the Respondents were under an obligation to lodge the deposit with an approved tenancy deposit scheme.

The Tribunal found that the indication given by Ms Diane Honeyman to the Applicants that the deposit would be refunded to them on the day they vacated the Property supported the Applicants' contention that the deposit had not been lodged with an approved scheme, as, had it been lodged, it would not have been possible for the repayment to have been made on the day the tenancy ended. On the balance of probabilities, therefore, the Tribunal found that the deposit had not been lodged in an approved tenancy deposit scheme.

Having made that finding, the Tribunal was bound, by Regulation 10 of the 2011 Regulations, to order the Respondents to pay to the Applicants an amount not exceeding three times the amount of the tenancy deposit.

The view of the Tribunal was that the Respondents' failure was serious and flagrant, and had been aggravated by their failure to return the deposit or to communicate in any way with the Applicants when they sought repayment. The Respondents had offered no excuse for their failure and the view of the Tribunal was that the amount the Respondents should be ordered to pay should be the maximum permitted under Regulation 10 of the 2011 Regulations, namely three times the amount of the tenancy deposit.

Decision

The Tribunal determined that the application should be decided without a Hearing and made an Order for Payment by the Respondents to the Applicants of the sum of Nine Hundred Pounds (£900).

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.

George Clark

Legal Member/Chair

15 January 2020

Date