



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/23/3878

Re: Property at 86 Massereene Road, Kirkcaldy, Fife, KY25RT (“the Property”)

Parties:

Miss Lynn Warnes, 86 Massereene Road, Kirkcaldy, Fife, KY25RT (“the Applicant”)

Mrs Catherine Naisby, Westbank Cottage, Meadowfield, Kirkcaldy, Fife, KY2 5XE (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

1. Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent failed to comply with any duty in terms of regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and the Respondent shall pay the sum of £750 to the Applicant which represents one and a half times the deposit of £500.

2. Background

This was an application for a penalty in connection with a tenancy deposit in terms of regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (‘the regulations’) and rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (‘the rules’). The Applicant was represented by Ms Iona Watson Housing Adviser of Frontline Fife and the Respondent was represented by Ms Jackie Barr Director of Streets Ahead Scotland Ltd. The parties did not attend.

Discussion

3. The tenancy agreement lodged suggested that the tenancy started in June 2022 whereas the application suggested it started around 24 May 2019. Ms Barr clarified that the tenancy started on 3 June 2019 and an earlier agreement was signed at that time. According to Ms Watson, the Applicant sought advice from Frontline Fife about housing options in September 2023 and became aware of the tenancy deposit scheme. The Applicant contacted the Respondent around 15 September 2023 and drew this to her attention. The application was made on 26 September 2023 and at that time the deposit had not been lodged. The deposit was not lodged until 28 November 2023. Ms Barr was not initially in a position to provide information to the Tribunal. She denied that the Applicant contacted the Respondent regarding the deposit. It was her position that the Respondent had attended a housing adviser for advice and after becoming aware of the duty to lodge the deposit, did so in November 2023. The Tribunal adjourned to enable Ms Barr to seek further instructions from the Respondent regarding any mitigating circumstances surrounding the late lodging of the deposit. When the Tribunal reconvened Ms Barr advised the Tribunal that the Respondent sought advice from Fife Private Rental Solutions on 10 November 2023 and 28 November 2023 and as a result of that advice the deposit was lodged in an appropriate scheme. Ms Barr was unable to explain how the Respondent became aware of her obligations in November 2023. Ms Watson stated that she spoke to the Respondent on the telephone on 25 October 2023 at the request of the Applicant due to the Applicant receiving (what Ms Watson considered to be a defective) notice to leave. Ms Watson mentioned the deposit at that time. Ms Barr was unable to provide any information regarding any steps the Respondent took in terms of regulation 42 to inform the Applicant the deposit was being lodged and to provide details of the scheme used. Ms Barr stated that before the property was let to the Applicant a family member lived in the property. The Respondent has a second property let to another family member and Ms Barr is not aware if a deposit has been paid for that property.

4. Findings in fact

- **The Respondent is the joint owner of the property.**
- **The Respondent is a registered landlord.**
- **The Applicant has let the property since 3 June 2019.**
- **The Applicant paid a deposit of £500 in June 2019.**
- **The Applicant's representative discussed the deposit with the Respondent on the telephone on 25 October 2023.**
- **The deposit was unprotected for 4 years until it was lodged in a deposit scheme on 28 November 2023.**
- **The Respondent did not notify the Applicant that the deposit was lodged or provide details of the scheme used.**

5. Reasons

It is not disputed that this deposit of £500 was left unprotected for 4 years. Further, on the balance of probability the Respondent has not complied with any of the other duties set out in regulation 42 such as notify the Applicant the deposit was being lodged and details of the scheme used.

6. Being satisfied that there was a clear breach of regulation 3 the Tribunal went on to consider the gravity of the breach. On the one hand there was no suggestion that the Respondent has wilfully failed the deposit in a scheme. On the other hand the Respondent is a registered landlord who rents one other property. She became aware of her obligations regarding the deposit by 25 October 2023 and it was another month before the deposit was lodged. It appears that the deposit was only lodged in a scheme after the application was served on the Respondent by Sheriff Officer on 23 November 2023.

7. The Tribunal reviewed the recent cases regarding tenancy deposits. The Tribunal was mindful to impose a penalty that is fair, proportionate and just as set out by Sheriff Jamieson in Kirk-v- Singh B22/15. The maximum penalty is three times the deposit which is £500. This is not the most serious breach as it does not appear wilful. It is not the most minimal breach as the deposit was unprotected for 4 years and it appears it would have continued to be unprotected had it not been for the actions of the Applicant and her representative. Accordingly one and a half times the deposit, the sum of £750, is fair proportionate and just in all of the circumstances.

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.

18 January 2024

Lesley Anne Ward Legal Member

Date