



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 on an application made under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/20/0260

Re: Property at 253 Corkerhill Road, Glasgow, G52 1QR (“the Property”)

Parties:

Ms Alison Crone, Ms Kirsty Ann Stevenson, 253 Corkerhill Road, Glasgow, G52 1QR (“the Applicant”)

Mrs Kiranjit Nijjar, 2 Kirkle Drive, Newton Mearns, Glasgow, G77 5HA (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision

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 Respondent to the Applicant of the sum of £500.

Background

By application, received by the Tribunal on 24 January 2020, the Applicant sought an Order for Payment in respect of the failure of the Respondent to lodge a tenancy deposit in an approved tenancy deposit scheme, as required by Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties commencing on 1 May 2016. The lease provided for, and the Applicant paid, a deposit of £600. The Applicant also provided confirmation from SafeDeposits Scotland dated 9 October 2018 that they now held the deposit.

On 15 July 2020, the Respondent’s representatives, Miller Beckett & Jackson solicitors, Glasgow made written representations on her behalf. They stated that the

Respondent accepted that the deposit had not been lodged with an appropriate tenancy deposit scheme. This was simply due to ignorance of the Regulations, although she accepted that ignorance was no excuse. She had lodged the deposit in a bank account. The Respondent was made aware of the Regulations when she sought legal advice in relation to the tenancy in October 2018 and she then promptly lodged the deposit with SafeDeposits Scotland. The Respondent was an amateur landlady with only two rented properties. There was no deposit paid for the other property. As the deposit had been secured before the end of the tenancy, the Applicant had not suffered any loss and had not been deprived of the protection afforded by the Regulations. They believed that in the circumstances her breach was at the lower end of the scale and that it would not be proportionate or just to impose the maximum sanction possible under the Regulations.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 3 August 2020. Ms Stevenson, the Applicant, participated in the conference call. The other Applicant, Ms Crone, was unwell, so did not take part. The Respondent was represented by Mr Jwad Hanif of Miller Becket & Jackson solicitors, Glasgow. Ms Stevenson told the Tribunal that the Respondent had been aware of the Regulations at the time the tenancy started as she had said the deposit would be lodged with SafeDeposits Scotland. Mr Hanif had no knowledge of that discussion. Otherwise, the Parties did not have anything to add to their written representations. Ms Stevenson confirmed that she and Ms Crone were still living in the Property.

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, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without Hearing.

Under Regulation 3(1) of The Tenancy Deposits Scheme (Scotland) Regulations 2011 ("the Regulations"), 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 certain information required under Regulation 42, and Regulation 10 states that if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal must order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit.

The Tribunal noted that the Respondent had claimed to have been ignorant of the Regulations until October 2018 and took into account her submission that, when she had become aware of her legal responsibilities, she had promptly lodged the deposit with SafeDeposits Scotland. The Applicant had stated that the Respondent had been aware of the Regulations at the time the tenancy began, and the Tribunal did not make a finding of fact on that point. The Tribunal also noted that the Respondent accepted that ignorance of the law was no excuse.

The Tribunal also considered the point made by the Respondent's representative that the Applicant had suffered no loss and had not been deprived of the protection afforded by the Regulations as the tenancy was still ongoing. The Tribunal's view, however, was that, whilst it could not speculate on what might have happened had the tenancy come to an end before October 2018, the Applicant's funds were at risk

for a period of more than two years. The Tribunal did not regard the Respondent's failure as deliberate, and did not feel, in all the circumstances, that a sanction at the upper end of the range available to it was appropriate, but even so-called "amateur landlords" have to understand that they are operating in a highly regulated area, that the rules concerning tenancy deposits play an extremely important part in protecting both tenants and landlords and that failure to observe them is always a serious matter.

Having considered all the facts and circumstances of the case and all the evidence before it, the Tribunal decided that an Order for Payment in the sum of £500 would be just and proportionate.

Decision

The Tribunal determined that the application should be decided without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £500.

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

3 August 2020
Date