



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 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/20/1050

Re: Property at 23/3 Clerk Street, Edinburgh, EH8 9JH (“the Property”)

Parties:

Mr Myungsung Dong, Mr Markus Lakenbrink, Mr Mattis Leson, Mr Thomas Mcinerney, Ms Laura Glocker, 23/3 Clerk Street, Edinburgh, EH8 9JH; 23, Top, Clerk Street, Edinburgh, EH8 9JH; 23, Top, Clerk Street, Edinburgh, EH8 9JH; 23, Top, Clerk Street, Edinburgh, EH8 9JH; 23, Top, Clerk Street, Edinburgh, EH8 9JH (“the Applicant”)

Mr David Robert Cochrane, 31 Lowrie Gate, South Queensferry (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent in the sum of £2500.00.

Background

1. By application dated 5 April 2020 the Applicant applied to the Tribunal for an order under Regulation 9 of the 2011 Regulations in respect of the Respondent’s agents Grant Property Solutions Ltd.’s failure on behalf of the Respondent to timeously lodge the Applicant’s tenancy deposits in an approved Tenancy Deposit Scheme in accordance with Regulation 3 of the 2011 Regulations. The Applicant submitted a copy of the tenancy agreement, copies of the prescribed information, a copy of the email from SafeDeposits Scotland and a copy of the deposit payment confirmation.

2. By Notice of Acceptance dated 29 April the Chamber President accepted the application and a Case Management Discussion was assigned.
3. Intimation of the Case Management Discussion was sent to the Applicant by post on 15 July 2020 and was served on the Respondent by Sheriff Officers on 17 July 2020.
4. Written representations dated 4 August 2020 were received from the Respondent's representatives Grant Property Solutions Limited.

The Case Management Discussion

5. A Case Management Discussion was held by teleconference on 13 August 2020. Mr Myungsung Dong attended on behalf of the Applicant. Mr Andrew Hutton and Ms Diane Simpson attended on behalf for Grant Property solutions on behalf of the Respondent.
6. It was accepted by Mr Hutton that the Applicant's deposits had all been lodged with SafeDeposits Scotland outwith the 30-working day period permitted under the 2011 Regulations. The Tribunal referred Mr Dong to the written representations submitted by Mr Hutton and queried whether he had seen what was said. Mr Dong confirmed that he had. The Tribunal referred Mr Hutton to the extra-judicial offer contained in the document and noted that this was still on offer. Mr Dong indicated that he did not know if this was reasonable or not and was content to leave any decision to the Tribunal. He confirmed the deposits had been lodged on 14 October 2019 and subsequently on 16 January 2020. He confirmed the tenancy ended on 31 May 2020.
7. The Tribunal noted from the written submission by Mr Hutton and his oral submission that the deposits had been lodged within one month of being outwith the prescribed time limit. The delays had been as a result of human error but had been picked up during internal audits. Steps had been taken to ensure that in future all deposits would be lodged as soon as they were paid. Mr Hutton accepted that his company had registered late deposits on two previous occasions in the previous two years but had tightened its internal processes from the start of this year to ensure there were no further delays. He confirmed that although an order might be made against the Respondent it would be his company that would be responsible for payment. He considered the extra-judicial offer fair in the circumstances.

Findings in Fact

8. The Applicant paid a total deposit of £3475.00 to Grant Property Solutions Limited who were acting on behalf of the Respondent.
9. Grant Property Solutions failed to lodge the Applicant's deposit with an approved Tenancy Deposit Scheme within 30 working days.

10. Four of the deposits were lodged on 14 October 2019 after the tenancy commenced on 22 August 2019. The prescribed information in terms of the 2011 Regulations were sent to the Applicant on 20 January 2020
11. A fifth deposit was lodged on 16 January 2020 and protected from 20 January 2020 after the tenancy commenced on 1 December 2019 having been paid on 25 November 2019.

Reasons for Decision

12. Mr Hutton very frankly admitted that due to human error there had been a breach of the 2011 Regulations and the Applicant's deposits had been lodged outwith the time period prescribed. It was accepted by the parties that the application was timeous and that in accordance with Regulation 10 the Tribunal was bound to impose a financial sanction on the Respondent of not more than three times the deposit. The Tribunal accepted that by any standard the breaches would be considered to be at the lower end of the scale with four of the deposits being only a number of days late and the fifth deposit being less than a month late. The Tribunal noted that the prescribed information required in terms of the regulations had also been sent to the Applicant late.
13. In exercising its discretion, the Tribunal took account of the approach of the court in the case of **Russell-Smith and others v Uchegbu [2016] SC Edin 64**. The Tribunal considered what was a fair, proportionate and just sanction in the circumstances of the case always having regard to the purpose of the Regulations and the gravity of the breach. Each case will depend on its own facts and in the end of the day the exercise of the Tribunal is a balancing exercise.
14. The periods during which the Applicant's deposits were unprotected were short. That being the case a sanction at the lowest end of the scale might be justified. Against that, although the Respondent here is an individual the real blame lies with the Respondent's agents who on their own admission have in the last two years fallen foul of these regulations on two previous occasions. As a result, they offered to make an extra-judicial settlement of £2000.00 to the Applicant. The Tribunal was of the view that whilst a proportionate sanction was nonetheless at the lower end of the scale it was reasonable in the circumstances to take account of the professional capacity in which the Respondent's representatives had been acting which in the Tribunal's view placed a higher degree of responsibility to ensure compliance with the Regulations and after taking account of the previous failures to comply with the regulations determined that an appropriate sanction would be £2500.00.

Decision

15. Having considered the written submissions of the parties and their representatives together with the oral submissions and being satisfied that it has sufficient information before it to make a decision without a further hearing

finds the Applicant entitled to an order for payment by the Respondent in the sum of £2500.00

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.

Graham Harding

**Graham Harding
Legal Member/Chair**

**13 August 2020
Date**