

Housing and Property Chamber
First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/18/2292

Re: Property at 0/2, 80 Yorkhill Street, Glasgow, G3 8SR (“the Property”)

Parties:

Mr Anthony Narloch, 15 Wilton Street, Glasgow, G20 6LF (“the Applicant”)

Mr Anil Dhar, 33 Woodlands Grove, Isleworth, London, TW7 6NS (“the Respondent”)

Tribunal Member:

Nicola Irvine (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to an Order for payment in the sum of £600.

Background

The Applicant submitted an application on 28th August 2018 seeking an order for payment in terms of Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The Tribunal intimated the application to the Respondent by sheriff officer. A case management discussion was assigned for 1st March 2019 and reference is made to the notes from that case management discussion.

The Case Management Discussion

Both parties were personally present.

The Respondent advised that the Applicant signed the tenancy agreement on 13th March 2018 and moved into the property the same day that he viewed it. He advised

that he received a text message from the other tenant the next day advising that the Applicant was using drugs. He advised that the Applicant was verbally abusive towards him and the other tenant. The Respondent received a letter from Citizens Advice Bureau on 29th March 2018; the letter advised that the Applicant intended to move out of the property immediately. The Respondent expected the Applicant to move out of the property shortly thereafter. For that reason, the Respondent did not place the deposit of £300 in a regulated scheme. He intended to return the deposit upon the Applicant's departure. The Respondent received a message from the Applicant's representative on 4th June 2018 advising that the Applicant had left the property. The Respondent advised that on the day that the Applicant moved out of the property, he spread bleach all over the property and he failed to pay the last month's rent. For that reason, the Respondent did not return the deposit upon the Applicant's departure.

The Applicant disputed that he used illicit drugs and advised the Tribunal that he is in receipt of prescribed medication. He advised that he had concerns in relation to the condition of the property and was of the view that the property did not meet the repairing standard. He advised that he was given notice to leave the property and took issue with the ground stated. In the event, the Applicant left the property in June 2018.

Findings in Fact:

1. The Applicant and the Respondent entered into a Tenancy Agreement in respect of the property. The term of the tenancy was to be from 13th March 2018 to 12th March 2019.
2. The deposit paid by the Applicant in terms of that tenancy was £300.
3. The tenancy terminated on or around 10th June 2018.
4. The Respondent failed to comply with his duty in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations in respect that the deposit paid by the Applicant was not paid to an administrator of an approved scheme within 30 days as required and separately, the Respondent failed to provide the Applicant with the Prescribed information about his tenancy deposit in accordance with Regulation 42 within 30 days.

Reason for Decision

The Tribunal proceeded on the basis of the written documents which were before it and the information provided by the parties at the case management discussion. There was no Deposit Protection Certificate issued to the Applicant. The fact that the deposit was not lodged within 30 days of receipt, nor indeed at all, resulted in the Applicant's deposit being unprotected for the entirety of the tenancy.

The terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 are mandatory and state "*A landlord who has received a tenancy deposit in*

connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy-

- (a) pay the deposit to the scheme administrator of an approved scheme; and*
- (b) provide the tenant with the information required under regulation 42.”*

The Tribunal was satisfied that the Respondent failed to comply with his duties in terms of that regulation. It was the Respondent's duty to pay the deposit to the scheme administrator within 30 days of receipt and he failed to do that. The deposit was never paid into a relevant scheme which means that the Applicant's deposit was not protected. The Tribunal considered that an appropriate sanction for failure to comply with the duties was to order the Respondent to pay the Applicant £600 which represents 2 times the amount of the deposit.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Nicola Irvine

Legal Member/Chair

15th April 2019

Date