



Decision with Statement of Reasons 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/18/2596

Re: Property at 3e Thomson Avenue, Johnstone, PA5 8SS (“the Property”)

Parties:

Ms Joanne Brown, 8C Houston Square, Johnstone, PA5 8DT (“the Applicant”)

Mr Gregg Young, 2/1, 227 Onslow Drive, Glasgow, G31 2QE (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) being satisfied that the Respondent as landlord of the property at 3e Thomson Avenue Johnston PA5 8SS did not comply with any duty in Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, makes an order for the Respondent to pay to the Applicants the sum of three hundred and seventy pounds (£370).

This was a case management discussion ‘CMD’ in connection with an application in terms of rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, ‘the rules’ and regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, ‘the regulations’. The application was made on behalf of Ms Joanne Brown by Mr Kevin Montgomery of Renfrewshire Citizens Advice. The tribunal had before it the following copy documents:

1. Application dated 18 September 2018 and received by the tribunal on 1 October 2018.
2. Tenancy agreement between Gregg Young and Joanne Brown and John Millar dated 28 October 2013.

The Applicant was represented by Mr Kevin Montgomery of Renfrewshire Citizen's Advice. The Respondent arrived slightly late to the hearing, after the first preliminary matter had been dealt with.

Preliminary matters

1. The tribunal noted that a letter was sent to Ms Brown's representative on 11 October 2018 seeking clarification as to whether the application was to be in the name of both tenants; given the tenancy agreement was in joint names. The Applicant's representative then sent in a mandate signed by the second tenant Mr Brown, item 4 above. Mr Montgomery confirmed that he was instructed by both tenants and he sought to amend the application in terms of rule 13. The tribunal allowed the amendment.
2. The tribunal sought to ascertain the date the tenancy came to an end. The email referred to in item 3 above is unclear. The tribunal also noted that the email is assessed to "finntony" although it states "Dear Gregg". The application states that the tenant moved out on 18 July 2018. The Applicants' agent advised that this was the email address that the Applicants had to the Respondent. Mr Young confirmed that the tenancy came to an end on 18 July 2018.

Discussion

The tribunal heard submissions from the Applicants' representative and the Respondent. The Respondent stated that he is only has the one property which he rents out and he used to live in the property. He was not aware that he had an obligation to lodge the deposit in terms of the regulations. He stated that the tenancy agreement provided for the landlord to hold the money in trust and he thought this was sufficient. He has not returned the deposit because of the condition of the property. He stated that he was not aware that he should be registered as a landlord.

Mr Montgomery's position was that the Applicants have tried to get their deposit back without success. He stated that this was the type of situation the scheme was designed to prevent and that ignorance of the existence of the regulations is no excuse.

Both parties were content for a final decision to be made at the CMD.

Findings in fact

1. The tribunal was satisfied that the Applicants rented the property from the Respondent between October 2013 and 18 July 2018 when the tenancy came to an end.
2. The tribunal was satisfied that the Applicants' paid a deposit to the Respondent of £370 around October 2013 in connection with the rental of the property.
3. The tribunal was satisfied that the deposit was not paid into an approved scheme and that none of the duties contained in regulation 42 were complied with, such as providing the Applicants with the landlord registration number..
4. The tribunal was satisfied that the deposit has not been returned to the Applicants.

Reasons

The tribunal was satisfied that a clear breach of the regulations had occurred.

Regulation 3 provides:

A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 days of the beginning of the tenancy, pay the deposit to the scheme administrator for an approved scheme and provide the tenant with the information required under regulation 42.

The Respondent failed to lodge the deposit for the entire length of the tenancy. The deposit was never returned.

Turning to sanction, the tribunal reviewed all of the recent cases regarding tenancy deposit schemes and noted that in the case of Kirk-v- Singh 2015 SLT (sh ct) 111 Sheriff Jamieson was mindful of the need to

Proceed to impose a sanction which is "fair proportionate and just having regard to the seriousness of the non-compliance.

The tribunal was satisfied that the failure by the Respondent was not a wilful breach. The Respondent is only the landlord of the one property and he was unaware of his obligations.

On the other hand, the money was unprotected for 5 years and the Respondent was in a position of strength when the tenancy came to an end and he used that to his own advantage. The tribunal decided that a sanction of £370 was 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.

L Ward

18 December 2018

Lesley A Ward Legal Member

Date