



**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 (Regulations)**

Chamber Ref: FTS/HPC/PR/19/2959

Re: Property at 36 2F2 Leith Walk, Edinburgh, EH6 5AA (“the Property”)

Parties:

Ms Lucy Bartlett, C/O 67 Marchmont Road, Edinburgh, EH9 1HR (“the Applicant”)

MS Properties Edinburgh, 6A Wardie Crescent, Edinburgh, EH5 1AG (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the sum of £2,250 to the Applicant.

Background

This is an application under Rule 103 of the Tribunal Procedure Rules and Regulation 9 of the Regulations in respect of a failure by the Respondent to protect the Applicant’s deposit.

The Tribunal had regard to the following documents:

1. Application received 20 September 2019;
2. Tenancy Agreement commencing 1 April 2016;
3. Correspondence from the 3 Tenancy Deposit Schemes;
4. Emails between the Parties.

Case Management Discussion (CMD)

The Applicant did not appear but was represented by Mr Gordon Maloney of Living Rent Edinburgh. The Respondent did not appear and was not represented.

The Tribunal delayed the commencement of proceedings to see if the Respondent would appear. No one appeared.

The Tribunal was satisfied that the Respondent had been served with notification of the CMD today by virtue of certificate of service by Sheriff Officer dated 30 October 2019. The Respondent was aware that the Tribunal could proceed in absence and determine the matter if satisfied that it had sufficient information to do so and the procedure was fair.

The Tribunal heard from Mr Maloney, considered the documents and made the following findings in fact:

1. The Parties entered in to a tenancy of the Property commencing 1 April 2016;
2. The Applicant paid a deposit of £750 to the Respondent at commencement of the tenancy;
3. The Respondent did not protect the deposit until 27 March 2018;
4. The tenancy terminated on 1 July 2019;
5. The Applicant received repayment of her deposit in full following the termination of the tenancy;
6. The Respondent is in business as a residential landlord with numerous properties.

The Tribunal considered that it had sufficient information to determine the matter in the Respondent's absence and the procedure was fair.

The Tribunal had regard to the case of ***Russell-Smith and Others v Uchegbu [2016] SC EDIN 64***. The Tribunal followed the approach in that case and considered what was a fair, proportionate and just sanction in the circumstances of the case always having regard to the purposes 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 by the Tribunal of its judicial discretion is a balancing exercise.

The Tribunal weighed all the factors and found it be of significance that the Respondent was in business as a residential landlord; had multiple properties; and the deposit had been unprotected for 2 years.

In the circumstances the Tribunal considered that a maximum award was appropriate and awarded the sum of £2,250.00.

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.

A.Strain



29 November 2019

Legal Member/Chair

Date