



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/3364

Re: Property at Flat 2/1.27 Daisy Street, Glasgow G42 8JN (“the Property”)

Parties:

Mr Zumurd Hussain Raja, residing at Flat ½, 46, Albert Road, Glasgow G42 8DN, per his wife and agent Ms Nazreen Akhtar, Naz Home Services, 32, Osprey Avenue, Chatham, Kent ME5 7HY (“the Applicant”)

Mr Rajinder Bains, CDB Properties, 286 Allison Street, Crosshill, Glasgow G42 8RT per Allied Homes Ltd, 266, Allison Street, Crosshil, Glasgow G42 8RT (“the Respondents”)

Tribunal Members:

David Preston (Legal Member); Ms Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:

- **The application dated 16 October 2019 is deemed to have been received timeously;**
- **The Respondent had failed in his duty to pay the deposit paid by the applicant to the scheme administrator of an approved scheme under Regulation 3(1)(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”); and**
- **Orders the Respondent to pay to the Applicant the sum of £500 in terms of Regulation 10(a).**

Background:

1. By application dated 16 October 2019 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) and Regulation 9 of the Regulations the applicant sought an order for payment under Regulation 10.
2. By Notice of Acceptance dated 31 October 2019 a legal member of the First-tier Tribunal with delegated powers so to do, accepted the application for determination by the First-tier Tribunal and appointed the case to a Case Management Discussion (“CMD”).
3. A CMD took place at Glasgow Tribunal Centre, 20, York Street, Glasgow G2 8GT. The applicant attended along with his representative Ms Nazreen Akhtar and the respondent attended along with his representative, Ms Susan Hanlin..

Preliminary Matter:

4. The tribunal noted, and it was a matter of agreement between the parties that the tenancy had ended on 15 July 2019 and that the application was dated 16 October 2019, which was out-with the 3 month time limit withing which an application under Regulation 9.
5. The covering letter accompanying the application stated that the applicant had initially been sent on 10 October 2019 to ensure it reached the Tribunal before the deadline, but it had been rejected by the administration and returned to him along with his application to enforce the Letting Agent Code of Practice.
6. At the CMD the applicant produced a letter from the Tribunal dated 15 October 2019 explaining that it was unable to accept the applications when submitted together and asking that the applications be submitted separately.
7. The tribunal could see no reason for the rejection of the applications, particularly when one was subject to a time limit, and accepted that this had been an error on the part of the Tribunal administration which had been prejudicial to the applicant by making it impossible for him to adhere to the deadline.
8. Accordingly, the tribunal applied the overriding objective as set out in Rule 2 which requires that proceedings should be dealt with justly. By accepting the application as having been lodged on 14 October 2019, being the date referred to in the Tribunal’s letter dated 15 October 2019 there is no prejudice to the Respondent who has had the opportunity and attended the CMD to make representations in addition to his written representations dated 7 December 2019.

Discussion:

9. It was a matter of agreement between the parties that the Private Residential Tenancy Agreement had commenced on 15 October 2018. A deposit of £385 had been paid by the applicant on 3 October 2018, prior to the start of the tenancy. it

had not been paid into a deposit scheme and the tenancy had come to an end on 15 July 2019. The deposit had been returned to the applicant in full on 6 August 2019.

10. The respondent advised that did not involve himself with tenancy agreements relating to this property. the entire administration and management was in the hands of Allied Homes in whom he had full confidence. He accepted that in this case the deposit had not been paid into an approved scheme which he acknowledged was an oversight by Allied Homes.
11. Ms Hanlin explained that the deposit had been paid by the applicant without any reference or identification and it had not been allocated to the specific property and this had resulted in the subsequent transfer to a deposit scheme being overlooked. She referred the tribunal to the documents lodged which showed the deposit being paid with no identification (D3) and also showed (D4 and D5) the deposits from the previous and subsequent tenants in the property being paid to deposit schemes. She also explained that as soon as she had discovered the error, she had returned the deposit in full to the applicant despite a number of issues with the property which would have entitled her to make deductions had they been referred to the deposit scheme. She said that her firm had accepted responsibility for those items and had amended its process to avoid such an oversight occurring again. She accepted that the payment of the deposit without identification should have been checked and located at the time.
12. Ms Akhtar simply referred to the fact that the deposit had not been protected by an approved scheme for the entirety of their occupation of the flat.

Reasons for Decision:

13. Rule 17(1)(d) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states 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 it required to make a decision and that it would, therefore do so without a hearing.
14. Regulation 10 of the 2011 Regulations provides that if the tribunal finds 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 obligation on the landlord under these regulations is absolute and it is for him to seek recovery from his letting agent, if so advised.
15. The tribunal is required to exercise discretion in deciding what level of order is appropriate, subject to the maximum of three times the amount of the deposit which would be £1155. This case has come about as a result of an administrative oversight on the part of the respondent's letting agent.

16. However, the deposit was unprotected in terms of the 2011 Regulations for the full period of the tenancy agreement and both parties had been denied the opportunity to make use of the dispute resolution provisions under the tenancy deposit system.

17. The tribunal was mindful that there was nothing to suggest that the respondents' failure had been wilful, or that they had systematically been in default in respect of a number of properties.

18. In the whole circumstances presented to the tribunal, it considered that while any default of this sort is a serious matter, the failure was not at the most serious end of the scale which would attract the maximum sanction of three times the deposit. It considers that the fair, proportionate and just sanction in this case, having regard to the maximum sanction available, is the sum of Five hundred pounds (£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.

D. M. Preston

24 February 2020