



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

Chamber Ref: FTS/HPC/PR/19/3655

Re: Property at 96 Dicks Park, East Kilbride, Glasgow, G75 0DQ (“the Property”)

Parties:

Miss Janice Neil, 54 Rockhampton Avenue, East Kilbride, Glasgow, G75 8EQ (“the Applicant”)

Mrs Janet Coffey, 25 Wellesley Crescent, East Kilbride, G75 8TS (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent did not comply with the duty in Regulation 3 to pay the deposit to the scheme administrator of an approved scheme and ordered the Respondent to pay the Applicant the sum of four hundred and sixty five pounds (£465) being two times the amount of the tenancy deposit.

BACKGROUND

This was a Case Management Discussion to consider an application dated 9th November 2019 under Rule 103 for an order under Section 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011. (2011 Regulations) There was no written tenancy agreement. The Applicant had left the Property around 30th September 2019 and asked the Respondent where her deposit of £232.50 was. The Respondent through her daughter advised that they were not sure which scheme the deposit was held in as the Respondent’s late husband had taken to do with the tenancy deposit and all paperwork to do with the tenancy.

The Respondent did repay the tenancy deposit amount to the Applicant on or around the 4th October 2019, however the Applicant's daughter and representative Ms Rogers advised that they thought it was her father Mr Coffrey who had arranged to lodge the deposit and they did not know where it was. Ms Rogers indicated in a text message that as the deposit had been repaid it was no longer necessary to inform the Respondent of where the Deposit had been lodged.

The Discussion

The Applicant attended the CMD in person. The Respondent attended in person along with her daughter and representative Ms Lyndsay Rogers. The Legal Member explained the purpose of the CMD and clarified what facts were all agreed, namely that the tenancy originally began in 2005 but by March 2011 when the Regulations came into force the Applicant was the sole tenant in the Property paying latterly £255 per month. Both parties agreed there was no written tenancy agreement but the Respondent did agree that she and her late husband were the landlords; that rent was paid and that she found the Applicant to be a good tenant who kept the Property in good order. She advised that the applicant had never raised any issue with her or her husband about the tenancy deposit or where it was; that there was no real risk with the deposit because there were no real issues with the tenancy and pointed out the Applicant was given the deposit back within 4 days of the tenancy ending.

The Applicant made it clear at the CMD and in her application that she appreciates the deposit was returned but notes that it was never protected for the full time she stayed in the Property and had there been a dispute she would not have the protection of the deposit scheme to adjudicate on it.

The Respondent as landlady accepts the deposit was not in an approved scheme and that it should have been. She advised that her husband had dealt with all the paperwork relating to the tenancy of this Property (which is the only one they rent out) and that she did not know there was such a requirement to lodge deposits in a tenancy deposit scheme until the Applicant raised it last year.

She also advised as Landlords they had never sought to raise the rent more than once in the whole time the Applicant was a tenant and it was only after her husband passed away that the Respondent realised other rents for similar properties were much higher and that they could have but did not charge for other items the Tenant should have been responsible for. The legal member advised that other matters not relating to the lodging or not of the deposit were not really relevant to this dispute and the Respondent advised she was just trying to show mitigating factors.

Both parties confirmed that as the facts are not in dispute they would prefer the matter was dealt with today and the Applicant was content to leave the decision as to what penalty was applied to the legal member of the Tribunal.

FACTS

1. The Respondent entered into a lease with the Applicant whereby the Applicant leased the Property from the Respondent from July 2005 to either 30th September or 31st October 2019.
2. The rent paid was £255 per month.
3. The deposit paid by the Applicant to the Respondent was £232.50
4. The Regulations came into force in March 2011 and required the Landlord to pay the deposit into an approved scheme and to give the tenant relevant information regarding which scheme the deposit was held in.
5. The deposit was not lodged in an approved tenancy scheme from 2011 to the end of the tenancy, 8 years later.
6. The Applicant was not, at any time, given information about where her deposit had been placed.
7. The deposit has been returned to the Applicant promptly after the end of the tenancy.

REASONS

- The Tribunal found that the Respondent has failed to comply with the duty set out in Section 3 of the 2011 Regulations by failing to place the deposit in an approved scheme within 3 months of an approved scheme becoming operational, in terms of Section 4 of the 2011 Regulations
- That in terms of Section 10 of the 2011 Regulations the Tribunal is obliged to make an order that the landlord pay the tenant an amount not exceeding three times the amount of the tenancy deposit.
- The Tribunal considered that as there was no dispute over the facts and in accordance with the overriding objective to avoid delay, it was appropriate to make an order at the CMD.
- The Tribunal considered that the Respondent may have overlooked the need to lodge the deposit due to not being aware of the Regulations but noted that a responsible landlord should know that all deposits require to be lodged in an authorised scheme.
- The purpose of lodging a deposit in an approved scheme is to allow both parties the protection of having any dispute over the return of the deposit adjudicated by the scheme administrators who act in an objective way. The tenant has been deprived of this facility even though at the end of the tenancy the deposit itself has been returned promptly.
- The Tribunal noted that the Respondent's late husband Mr Coffrey had dealt with the paperwork to do with the tenancy and the Respondent had let him deal with it and further notes that the respondent advised that neither of them were aware of their duties under the Regulations but that the Property has now been re let and all obligations including lodging the deposit in an approved scheme are being complied with.
- Having taken account of the length of time the deposit has not been protected but also taking account of the fact the Landlord has paid back the deposit promptly and that it does not appear to have been a deliberate or malicious refusal to lodge the deposit, more ignorance

and a reliance on her late Husband who unfortunately also latterly suffered from dementia, the Tribunal considers the amount of two times the deposit as reasonable and appropriate and makes an order for this sum, namely £465.

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.

Jan Todd

Legal Member/Chair

Date

20th January 2020