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/19/0916

Re: Property at 45 Grange Terrace, Perth, PH1 2JR ("the Property")

Parties:

Mr Christopher Grant, Mrs Linsey Grant, 22 St Boswells Place, Perth, PH1 1SA ("the Applicant")

Mr Trevor Brister, 16 Jesserson Avenue, Clay Lane, Doncaster, DG6 7PE ("the Respondent")

Tribunal Members:

Ewan Miller (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order is granted against the Respondent for payment to the Applicant of the sum of ONE THOUSAND EIGHT HUNDRED POUNDS (£1800) STERLING

Background

The Respondent was the owner of the Property. The Applicant had leased the Property from the Respondent. The Applicant had alleged that the Respondent had failed to lodge the deposit paid in relation to the tenancy in to an approved tenancy deposit scheme within 30 days of the start of the tenancy as required by Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations"). The Applicant had applied to the Tribunal on 19 March 2019 after, they alleged, being unable to gain any response from the Respondent as to the whereabouts of their deposit once the tenancy had terminated.

Case Management Discussion

The Tribunal held a CMD at Inveralmond Business Centre, Auld Bond Road, Perth, PH1 3FX on 6 June 2019 at 10am. Mr Christopher Grant of the Applicant attended via conference call. The Respondent was neither present nor represented.

The Tribunal noted that the Tribunal papers had been served on the Respondent by Process Server on 7 May 2019. The Tribunal papers highlighted the date and place of the CMD to the Respondent. The papers also highlighted that a decision could be made in the absence of the Respondent. The Tribunal was satisfied that appropriate notification had been given to the Respondent and, on that basis, was content that it was appropriate to make a decision at the CMD

Findings in Fact

The Tribunal found the following facts to be established:-

- The Respondent was the owner of the Property during the period up until the tenancy terminated and the Property was repossessed;
- The Applicant had leased the Property around March 2015 from the Respondent at £600 pcm;
- The Applicant had paid a deposit of £600 to the Respondent upon taking entry
- No written lease was granted to the Applicant by the Respondent;
- The lease was terminated in January 2019 by virtue of a heritable creditor taking possession;
- The Respondent had failed to put the deposit in to an approved scheme and failed to return it to the Applicant.

Reasons for the Decision

The Tribunal was satisfied that there had been a breach of the Regulations by the Respondent. Mr Grant of the Applicant gave credible evidence to the Tribunal and the Tribunal had no reason to doubt the veracity of his statements. Although there was no written lease, the Applicant had produced evidence of the payments to the Respondent and also copies of text messages between them which confirmed their position.

The Tribunal was satisfied that the Applicant had taken a lease of the Property, paid the deposit (being equivalent to one months rent) and had been occupying the Property and paying rent to the Respondent. The bank statements provided confirmed this.

At the end of 2018 the Applicant had received correspondence from the courts and Aberdein Considine acting for the heritable creditor advising that the lease was being terminated as the property was being repossessed. The Applicant was granted an additional period of two months to find alternative accommodation, which they did. As a result the lease came to an end in January 2019.

The Applicant (both Mr & Mrs Grant separately) texted and messaged the Respondent to find out where their deposit was and to seek the return of it. Mr Grant

advised that no response had ever been received from the Respondent to either of them. As a result they had felt they had had no option but to go to the Tribunal.

The Tribunal considered matters. Whilst there was more limited written evidence in this matter, as a result of the lack of a written lease, the Tribunal had no reason to doubt the Applicant. They appeared sincere, credible and believable to the Tribunal. They had produced evidence of payment to the Respondent.

The Respondent had not provided any submissions or been in contact with the Tribunal to provide any indication that he had a contrary position.

It appeared to the Tribunal that the Respondent had taken a very cavalier attitude to the lease to the Applicant in general, and to the deposit in particular. There was no evidence to suggest that the deposit had been placed in a scheme. No information had been given to the Applicant. The Respondent had not responded to any queries from the Applicant as to the whereabout of the deposit upon termination of the lease and the Applicant remained without their deposit.

The Tribunal can make an award of up to 3 times the monthly rental against the Respondent, in terms of the Regulations. In reaching a decision, the Tribunal requires to act fairly and take a balanced approach, weighing the behaviour of the Respondent and taking in to account both positive and negative factors.

In this particular case there were no positive factors to consider. The Respondent had taken the deposit and had presumably kept it for himself without putting it in to an approved scheme as required by the Regulations. This was a flagrant breach of the Regulations. The Applicant appeared to have lost their deposit. No communication had been given by the Respondent both to the Applicant and the Tribunal. On that basis, The Tribunal was satisfied that it was appropriate to award a penalty at the top of the scale. The Tribunal therefore imposed the maximum penalty of £1800

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.

Ewan Miller

Legal Member/Chair

6/6/19

Date