

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing(Scotland) Act 2014

Chamber Ref: FTS/HPC/PR/19/1757

Rule 103 Application for an Order for Payment where Landlord has not paid the deposit into an approved scheme.

Re: Property at 12/4 (1f2), Viewforth, Edinburgh, EH10 4JF ("the Property")

Parties:

Ms Maria Rogers, 31 Comiston Road, Edinburgh, EH10 6AB ("the Applicant")

Ms Cheryl Strong, 72 Langside Drive, Newlands, Glasgow, G43 2ST ("the Respondent")

Tribunal Members:

Shirley Evans (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent failed to comply with her duty as a Landlord in terms of Regulations 3 and 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") as amended by The Housing (Scotland) Act 2014 (Consequential Provisions) Order 2017 and grants an Order against the Respondent for payment to the Applicant of the sum of Three Hundred and seventy five Pounds (£ 375.00) Sterling.

Background

1. By application dated 10 June 2019 the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property) Chamber for an order for payment where a landlord has not paid a deposit into an approved scheme in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"). The Applicant lodged a copy Tenancy Agreement between the Applicant and the Respondent dated 27 October 2013 with an AT5 dated 31 October 2013, a Deposit Protection Certificate from Safe

Deposits Scotland ("SDS") and email correspondence between the parties dated 4 May 2016 and an email dated 28 February 2019.

2. On 24 July 2019, the Tribunal issued a Notice of Acceptance of the Application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").
3. The Tribunal advised both parties on 31 July 2019 that a Case Management Discussion under Rule 17 of the Regulations would proceed on 11 September 2019. On 31 July 2019 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 20 August 2019. This paperwork was served on the Respondent by Alexander Irvine, Sheriff Officer, Glasgow on 1 August 2019. A certificate of execution of service was received by the Tribunal administration.
4. The Respondent did not make any written representations by 20 August 2019. The Respondent emailed the Tribunal administration on 22 August 2019 requesting she be allowed to lodge her written submissions by 23 August 2019 as she had been on holiday. The Tribunal granted her request, there being no prejudice to the Applicant.
- ~~5. On 23 August 2019 the Respondent lodged written representations together~~ with a letter from her doctor dated 22 August 2019, email correspondence between the parties dated 4 May 2016 and the Deposit Protection Certificate from SDS. The Respondent admitted she had not paid the deposit into SDS until 4 May 2016, despite the tenancy starting on 13 October 2013. As soon as she had realised her error she paid the deposit into SDS. At the time the tenancy had started she had been taking medication for depression.

Case Management Discussion

6. The Tribunal proceeded with the Case Management Discussion on 11 September 2019. The Applicant was personally present. The Applicant brought along Ms Palmer as her supporter. The Respondent also appeared personally.
7. It was a matter of agreement between the parties that the tenancy started on 27 October 2013, that the Applicant had paid the Respondent a deposit of £750 in September 2013, that the deposit was not paid to SDS until 4 May 2016, that the Respondent had advised the Respondent of her error by an email of 4 May 2016 and that the tenancy had ended on 31 March 2019.
8. The Applicant explained that at the end of the tenancy she had cause to speak to the Scottish Association of Landlords ("SAL") on another matter unrelated to the Property and mentioned that in the context of this Property the Respondent had not paid the deposit into SDS until 4 May 2016 despite the tenancy starting on 27 October 2013. SAL advised her that she should take action against the Respondent in the circumstances. She advised the

Tribunal that until the deposit had been paid to SDS she had not received information from the Respondent as to the scheme the deposit had been held. The Respondent advised she had not been inconvenienced by the Respondent's failure to pay the deposit into an approved scheme when she should have done.

9. The Respondent in answer explained that at the time the tenancy was granted she had been on medication for the treatment of depression for 14 months. At this time she was coming off the medication and referred to the letter from her doctor dated 22 August 2019 which was before the Tribunal. This was the start of her recovery. She explained that she had not given the deposit much consideration at this time as her life was disruptive. She explained that she had paid the deposit into a dedicated bank account which she used to receive rent and pay expenses for the Property. She had three properties in total including the Property which she rented out. She had been a Landlord for 19 years. She was not a member of any Landlord association.
10. The Respondent further explained that it was not until a tenant from one of her other tenancies was moving out in about May 2016 that she realised she had not placed the Applicant's deposit with SDS. She explained that she already had an account with SDS and had accessed the portal at the end of this other tenancy and realised her error, at which point she transferred the £750 deposit paid by the Applicant into SDS. She explained she had immediately emailed the Applicant to explain the position. The Applicant accepted that she had received an email on 4 May 2016 and responded on 4 May 2016.

Findings in Fact

11. The Tenancy Agreement between the parties commenced on 27 October 2013 and terminated on 31 March 2019.
12. The Applicant agreed to pay a deposit of £750.
13. The Applicant duly paid the deposit of £750 in September 2013.
14. The Respondent held the deposit in a dedicated bank account until 4 May 2016. The Respondent did not pay the deposit into an approved scheme and did not advise the Applicant as to the details of the scheme in terms of the 2011 Regulations.
15. The Respondent suffered from depression and had been on medication at the time the tenancy started to treat her symptoms. Her life was disrupted by her condition.
16. The Respondent paid the deposit to SDS on 4 May 2016.

Reasons for Decision

17. For the purpose of Regulation 9(2) of the 2011 Regulations the Tribunal found that the application was made in time within 3 months of the tenancy termination. The 2011 Regulations were intended, amongst other things to put a landlord and a tenant on equal footing with regard to any tenancy deposit and to provide a mechanism for resolving any dispute between them with regard to the return of the deposit to the landlord or tenant or divided between both, at the termination of a tenancy.
18. The amount to be paid to the Applicant is not said to refer to any loss suffered by the Applicant. Accordingly, any amount awarded by the Tribunal in such an application cannot be said to be compensatory. The Tribunal in assessing the sanction level has to impose a fair, proportionate and just sanction in the circumstances, always having regard to the purpose of the 2011 Regulations and the gravity of the breach. The Regulations do not distinguish between a professional and non-professional Landlord such as the Respondent. The obligation is absolute on the Landlord to pay the deposit into an Approved Scheme.
19. In assessing the amount awarded, the Tribunal has discretion to make an award of up to three times the amount of the deposit, in terms of Regulation 10 of the 2011 Regulations.
20. The Tribunal considered that the Respondent's failure was not wilful. The Tribunal noted that the Respondent had correctly admitted her breach of the Regulations in her written response. The Tribunal also noted that the Respondent had not paid the deposit into an approved scheme until it came to her attention on 4 May 2016 that she had not paid the deposit. The Tribunal noted that the Respondent's explanation for this was due to her suffering from depression, that as soon as she realised she had made an error she paid the deposit to SDS and advised the Applicant of her error. The Tribunal also noted that the Applicant had not suffered any inconvenience as a result and had brought the Application on the advice of SAL.
21. The Tribunal noted the Respondent had failed to comply with her duties under Regulations 3 (1) (b) and 42 of the 2011 Regulations to provide the Applicant with information as to where the deposit was protected.
22. Despite this, the purpose of the 2011 Regulations had not been defeated. She had taken full responsibility for her error and had taken immediate steps to rectify her error.

Decision

23. In all the circumstances, the Tribunal was not inclined to order the maximum amount of three times the Tenancy Deposit. The Tribunal considered that a fair, proportionate and just amount to be paid to the Applicant was three

hundred and seventy five pounds (£375) Sterling and accordingly made an Order for Payment by the Respondent to the Applicant.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.


Legal Member/Chair

Date

11 September 2019.