Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/18/2766

Re: Property at 4/6 Craigleith Avenue South, Edinburgh, EH4 3LQ ("the Property")

Parties:

Mr Darren Rollett, 443 42nd Avenue South, Unit 314, Seattle, WA USA, 98116, United States ("the Applicant")

Ms Julia Mackie, 20 Cumlodden Avenue, Edinburgh, EH12 6DR ("the Respondent")

Tribunal Members:

Fiona Watson (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order is granted for payment by the Respondent to the Applicant in the sum of TWO THOUSAND ONE HUNDRED AND FIFTY POUNDS (£2150) STERLING

- Background

  An application was submitted by the Applicant under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations"). Said application sought an Order for payment under section 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") on the basis that the landlord had failed to lodge a tenancy deposit into an approved tenancy deposit scheme.

- The Case Management Discussion

  A Case Management Discussion ("CMD") took placed on 28 February 2019. The CMD took place by way of conference call as the Applicant resides in the USA. The Respondent's representative, Mr Mackie, appeared personally whilst the Applicant participated via conference call.

  The Applicant moved for an order to be granted in the maximum sum of £3225, being the equivalent of three times the deposit paid. The deposit paid was £1075. The landlord had failed to lodge this deposit into an approved tenancy deposit scheme in Scotland. The landlord had failed to abide by their obligations under the 2011 Regulations and accordingly the Tribunal should grant the maximum sanction. The Applicant advised that he was repaid £684 from the deposit on 20 November 2018, with the sum of £391 having been retained by the landlord for costs of works which the applicant disputed were due. The applicant confirmed he would agree that sums would be due for removal of furniture as he had been let down at the last minute by the charity he had organised to come and take away the furniture, and as he was flying to the US the next day he didn't have time to organise alternative arrangements. He disputed the reminder was due to be retained.

  Mr Mackie admitted that the deposit had not been paid the deposit into a scheme. He advised that he had taken back management of the property from his former letting agents at the time of the start of the tenancy and at that time was also diagnosed with cancer. Due to his illness, he forgot to lodge the deposit with a scheme. Mr Mackie unreservedly apologised for this error. He confirmed that he was aware of the obligations to lodge the deposit, but simply forgot to do so due to the illness. He only realised his error once the Applicant had vacated the property.

  Mr Mackie confirmed that he had retained the sum of £391 from the deposit to cover costs incurred for disposal of items, cleaning and replacement of items broken/missing. He refunded £684 to the Applicant on 26 November 2018.

- Findings in Fact

The Tribunal was satisfied that:

1. A deposit of £1075 had been paid by the applicant as a tenancy deposit to the respondent
2. The £1075 was not paid into an approved tenancy deposit scheme in Scotland
3. The Respondent was in breach of sections 3 and 42 of the 2011 Regulations by failing to lodge the deposit into a scheme and also by failing to provide the prescribed information to the tenant.

- Reasons for Decision

Section 3 of the 2011 Regulations states:

3.—(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—

(a)pay the deposit to the scheme administrator of an approved scheme; and

(b)provide the tenant with the information required under regulation 42.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A "relevant tenancy" for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

(a)in respect of which the landlord is a relevant person; and

(b)by virtue of which a house is occupied by an unconnected person,

unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions "relevant person" and "unconnected person" have the meanings conferred by section 83(8) of the 2004 Act.

Section 10 of the 2011 Regulations states:

***10.** If satisfied that the landlord did not comply with any duty in regulation 3 the Tribunal—*

(a)must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(b)may, as the Tribunal considers appropriate in the circumstances of the application, order the landlord to—

(i)pay the tenancy deposit to an approved scheme; or

(ii)provide the tenant with the information required under regulation 42.

The 2011 Regulations were put in place to afford protection to tenants that their deposits would be held securely, and to ensure that there would be an independent and fair arbitration process available for parties where any disputes at the end of a tenancy arise. The landlord's failure to lodge the deposit into a scheme has deprived the tenant of this security. It has also deprived the tenant of the ability to utilise the scheme's free and impartial dispute resolution process to determine whether any retention should be made from the deposit.

The landlord himself admitted his failure, and also admitted that he was aware of his obligations to lodge the deposit into a scheme. The Tribunal took into account Mr Mackie's submissions that he had been diagnosed with cancer around the time of the start of the tenancy and due to this happening, he forgot to lodge the deposit. The Tribunal also took into account the fact that Mr Mackie is not the landlord here and is in fact the landlord's representative. Whilst it may be the case that Mr Mackie took on the management of the property on Mrs Mackie's behalf, it remains that Mrs Mackie as landlord was the responsible party when it came to ensuring the obligations under the 2011 Regulations were met.

The Tribunal was satisfied that the failure to lodge the deposit was not done intentionally by the Respondent. However, the Tribunal was satisfied that this was a serious breach of the 2011 Regulations which had deprived the Applicant of the security of the deposit being held in a scheme, and also deprived him of the ability to utilise a scheme dispute resolution mechanism to determine retention of the deposit thereafter. Accordingly, it was held by the Tribunal that it was appropriate on the basis of the information before it to make an award under section 10 of the 2011 Regulations in the sum of £2150.

- Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent payment by the Respondent to the Applicant in the sum of TWO THOUSAND ONE HUNDRED AND FIFTY POUNDS (£2150) STERLING

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.

Fiona Watson

28/2/19

Legal Member/Chair **Date**