



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

Chamber Ref: FTS/HPC/PR/19/2876

Re: Property at 10/16 Pilrig Heights, Edinburgh EH6 5BB (“the Property”)

Parties:

Mr Adam Pidgeon, residing at 6-9 Grandfield, Edinburgh (“the Applicant”)

And

Alasdair Hastie, residing at 17 Cockburn Avenue, Dunblane, Perthshire, FK15 0FP (“the Respondent”)

Tribunal Members:

Paul Doyle (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has breached its obligations under regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Background

1. On 18 June 2009 the respondent let to the applicant and one other the flatted dwellinghouse at 10/16 Pilrig Heights, Edinburgh EH6 5BB. A Tenancy agreement was entered into which required payment of a deposit of £695. The tenancy ended in June 2019.

The Case Management Discussion

2. The applicant was present and was represented by his mother, Mrs K Pidgeon. The respondent was present but was not represented he relies on a detailed written

submission. The respondent's position is that he entrusted all of the arrangements for the tenancy to a letting agent. He is unaware whether or not a deposit was paid, but as soon as he was told that any deposit which may have been paid at the commencement of the tenancy had not been transferred to an approved deposit scheme in 2013, he created a deposit account with an approved deposit agency so that the applicant and his co-tenant were adequately protected. The respondent says that he ensured that neither tenant was out of pocket at the end of the tenancy. In this case there had been an unintentional omission. Both parties asked me to dispose of this case today, without the need for a further hearing.

Findings in Fact

3. On 18 June 2009 the respondent agreed to let the dwellinghouse at 10/16 Pilrig Heights, Edinburgh EH6 5BB to the applicant and one other tenant. A tenancy agreement was entered into setting out the agreed rental and requiring a deposit of £695.

4. Before taking entry the Applicant and his co-tenant made a deposit payment of £695 to the letting agents employed by the respondent. The letting agents retained that money and have not accounted to either the applicant or the respondent for it. On 10 May 2019 the respondent served notice to quit providing for termination of the tenancy on 31 July 2019. Parties' agreed to end the tenancy on 16 June 2019

5. On 22 April 2019 and 9 May 2019 the applicant emailed the respondent complaining that the deposit paid when he took entry had not been placed with an approved deposit scheme. On 10 May 2019 the respondent had lodged £750 with Mydeposit Scotland (an approved deposit scheme) and obtained deposit protection certificate DPC215715. The respondent lodged the deposit with Mydeposit Scotland in the joint names of the applicant and his co-tenant. He provided email addresses and phone numbers of the two tenants, but the deposit account was created in the name of the applicant's co-tenant alone.

6. On 16 June 2019 (the day the tenancy terminated) The landlord gave the applicant's co-tenant two cheques for £350 (one made payable to the applicant) representing equal shares of the deposit paid when the applicant took entry to the property, as security against delays in release of funds by Mydeposit Scotland. The co-tenant did not hand that cheque to the applicant. On 24/06/2019 the applicant's co-tenant was told by MyDeposit Scotland that the deposit would be released to him. By 29 June 2019 MyDeposit Scotland released the deposit to the applicant's co-tenant, who then paid the applicant this one-half share of the funds.

7. The respondent's agents did not pay the deposit into a tenancy deposit scheme. In April 2019 the respondent became aware that the deposit had not been paid into an approved tenancy deposit scheme. On 10 May 2019 he paid £750 of his own money into an approved scheme to protect the applicant and his co-tenant. When the tenancy ended the respondent refunded the applicant and his co-tenant in full. The respondent had no intention of depriving the applicant of repayment. The applicant has not suffered any loss as a result of the respondent's omission

Reasons for Decision

8. The tenancy agreement records that a deposit was paid and the applicant produces emails from the respondent which refer to payment of a deposit. On the balance of probabilities the applicant establishes that a deposit of £695.00 was paid at the commencement of the tenancy.

9. An unusual feature of this case is that there is no trace of the deposit after it was paid. The respondent used letting agents, and changed letting agents during the currency of the tenancy. It was only in April 2019 that any consideration was given to the deposit. It was only in May 2019 that the landlord paid funds representing the deposit into an approved scheme. Even though the respondent relied on letting agents, the respondent's obligation to place the deposit funds on an approved scheme was created in 2013. The respondent unequivocally accepts that the responsibility for the deposit has lain with him since 2013.

10. The respondent now understands the requirements of the 2011 regulations. The Respondent repaid the deposit at the termination of the tenancy. The respondent acknowledges his error.

11. The Applicant asked me to make a payment order. The purpose of the order is not to enrich the applicant. The purpose of the order is to punish the respondent; to mark society's displeasure; to protect society and to ensure the enforcement of the 2011 regulations in the future. The applicant has not suffered any loss. The respondent clearly took steps to protect the deposit and refund the applicant as soon as questions were raised about the deposit. The respondent has learnt from this experience and is not likely to ignore the 2011 regulations again.

12. The applicant's share of the deposit was 347.50. For a number of years his deposit was not protected. As soon as the respondent became aware of the existence of the deposit and the requirements of the 2011 Regulations he applied his own funds to ensure that the applicant's deposit was protected, but there is an undisputed breach of the 2011 regulations. A payment order amounting to one half of the applicant's share of the deposit reflects the seriousness of the breach of the 2011 regulations.

13. The appropriate level of payment order is £173.75

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the applicant of One Hundred and Seventy-three pounds and seventy five pence (£173.75) within 14 days of service of this order.

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.

P.Doyle

Legal Member



12 December 2019