



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

Chamber Ref: FTS/HPC/PR/20/0270

Re: Property at 24/15 Milton Street, Edinburgh, EH8 8HE (“the Property”)

Parties:

Mr Paul Leighton, 27/8 The Poplars, Hope Street, Inverkeithing, KY11 1LN (“the Applicant”)

Mr Graeme Walker, 439 Brady Lane, Austin, Texas, 78746, United States (“the Respondent”)

Tribunal Member:

Alan Strain (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the sum of £550 to the Applicant

Background

This is an application under Regulation 9 of the Regulations and Rule 103 of ***The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Rules)*** in respect of an alleged failure to protect a tenancy deposit.

The Tribunal had regard to the following documents:

1. Application received 24 January 2020;
2. Short Assured Tenancy Agreement (**SAT**) commencing 5 January 2015;
3. Safe Deposit Scotland (**SDS**) Certificate confirming receipt of deposit on 30 August 2019;
4. Written Representations from Respondent dated 10 March 2020 with associated productions;
5. Tribunal Direction dated 2 July 2020;

6. Written Representations from Respondent dated 3 July 2020 enclosing 6 documents in response to the Direction as follows:
 - a. Email from SDS confirming repayment of deposit to previous tenant dated 27 December 2014;
 - b. Email from SDS confirming deposit protected for subsequent tenant dated 20 December 2019;
 - c. Email exchange between the Parties dated 14 and 21 February 2018;
 - d. Email from Respondent to Applicant dated 5 December 2014;
 - e. Email from SDS confirming deposit protected for previous tenant dated 20 May 2013;
 - f. Bank Statement from Respondent.

Case Management Discussion (CMD)

The CMD proceeded by conference call in light of the current situation.

The Applicant participated in person and represented himself. The Respondent participated and represented himself.

The Tribunal then heard from the parties.

The Respondent's position was that the deposit was not protected until 30 August 2019 due to oversight on his part. At the time he had been moving house abroad and had a young family. He was not a professional landlord. He had been letting properties since 2004 and now had 7 properties which he let. The previous tenant and subsequent tenant in this Property all had their deposits protected. The deposit had been kept in a separate bank account and there had always been sufficient funds to cover this. The deposit was not returned to the Applicant but was used by agreement to cover rent arrears. The deposit had been protected as soon as the oversight was drawn to the Respondent's attention and upon receipt of legal advice.

The Applicant accepted that it had been agreed to use the deposit towards rent arrears.

The Parties agreed that the Applicant had vacated on 10 November 2019.

The Tribunal informed the Parties that it was only going to determine the issue of the deposit protection and matters such as rent arrears were not relevant to that determination.

Decision and Reasons

The Tribunal considered that it had sufficient information to determine the matter at this stage and that the procedure was fair.

The Tribunal considered the evidence before it and made the following findings in fact:

1. The Parties entered into the SAT commencing 5 January 2015;
2. The Applicant paid a deposit of £1,100 which was protected with SDS as of 30 August 2019;

3. The SAT ended on 10 November 2019;
4. The deposit was unprotected for a period of 4 years and 8 months;
5. The Respondent was an experienced landlord with 7 properties and was aware of the requirement to protect the deposit;
6. The Respondent had protected the deposit of the tenants prior to and subsequent to the Applicant;
7. The Respondent's failure to protect the deposit was due to oversight on his part;
8. The Respondent protected the deposit when the oversight was drawn to his attention and he received legal advice;
9. The Respondent applied the deposit (by agreement) towards outstanding rent.

It was not in dispute that the tenancy deposit had not been protected in breach of the regulations. Having made that finding it then fell to the Tribunal to determine what sanction should be made in respect of the breach. In so doing the Tribunal referred to and adopted the approach of the court in ***Russell-Smith and others v Uchegbu [2016] SC EDIN 64***. The Tribunal considered what was a fair, proportionate and just sanction in the circumstances of the case always having regard to the purpose of the Regulations and the gravity of the breach. Each case will depend upon its own facts and in the end of the day the exercise by the Tribunal of its discretion is a balancing exercise.

The Tribunal weighed all the factors and found it be of significance that the deposit was unprotected for 4 years and 8 months which was almost the duration of the tenancy; the Respondent was an experienced landlord with knowledge of the requirement to protect the deposit; he had protected the deposit of previous and subsequent tenants of the Property; the failure to protect the deposit was due to oversight on his part and the Applicant had suffered no prejudice.

In the circumstances the Tribunal considered the breach to be at the lower end of the scale and awarded the sum of £550.

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.



9th July 2020

Legal Member/Chair

Date