



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

Chamber Ref: FTS/HPC/PR/21/0688

Re: Property at Flat 1, 9 Grosvenor Crescent, Glasgow, G12 9AF (“the Property”)

Parties:

Mr Christopher Bigley, Mrs Hannah Bialic, 3/3, 40 Clouston Street, Glasgow, G20 8QX (“the Applicant”)

Ms Shirley Jane Dey, Flat 1, 9 Grosvenor Crescent, Glasgow, G12 9AF (“the Respondent”)

Tribunal Members:

Lesley Johnston (Legal Member)

Decision (in the presence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay the Applicants the sum of £750.

Background

1. The Applicants apply to this Tribunal in terms of Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (‘the Regulations’). The application is made to the Tribunal in terms of rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules for Procedure) Amendment Regulations 2017 (‘the rules’).
2. The Applicants seek an Order for Payment from the Tribunal in terms of regulation 10 in respect that the Respondent failed to pay the tenancy into an approved tenancy deposit scheme within 30 working days of the beginning of the tenancy. In particular, they seek an Order in the sum of £1500 being 2 x the level of the deposit of £750 paid.

The Case Management Discussion

3. The case called on 6 May 2021 at 2pm for a Case Management Discussion by telephone.
4. The Applicants were in attendance and not represented.
5. The Respondent was in attendance and also represented by Jahanzab Malik of KPM Residential Limited (Letting Agents).
6. The following documents were lodged:
 - (i) Copy signed tenancy agreement dated 11 November 2019;
 - (ii) Copy email from Safe Deposits Scotland to Ms Bialic dated 31 December 2019;
 - (iii) Copy email from Safe Deposits Scotland to Ms Bialic dated 17 March 2021
 - (iv) Copy email from Mr Bigley to KPM Residential giving notice to end the tenancy dated 28 January 2021;
 - (v) A screenshot showing the start and end date of the tenancy;
 - (vi) An email (written submission) from the Respondent dated 21 April 2021;
 - (vii) An email (written submission) from the Respondent's representative dated 21 April 2021.

Submissions for the Applicants

7. The Applicants submitted that they relied on the documents lodged in support of their application. They paid the deposit to KPM Residential Limited on around 16 October 2019. The tenancy ended on 24 February 2021. They were first aware that the deposit had not been lodged on time on 31 December 2019 when they received an email from Safe Deposit Scotland informing them that the deposit had been lodged late. However, owing to the date on which it was sent, they didn't take much notice of the information contained within the letter. It wasn't until they received further correspondence from Safe Deposit Scotland on 17 March 2021 intimating again that the tenancy deposit was lodged late and that the Applicants could make an application to the Tribunal in respect of the late lodging, that the Applicants realised the delay and that they could make an application to this Tribunal.
8. The Applicants accepted that the deposit should have been paid into an approved scheme on 23 December 2019. They accepted that the deposit was lodged 7 days (being 3 working days) after the deadline.
9. In relation to the level of sanction ought to be imposed by the Tribunal, they sought twice the level of the deposit on the basis that they considered it was appropriate taking account the nature of the breach and in light of the fact that the maximum sanction was three times the level of the deposit.

Submissions for the Respondent

10. Mr Malik made submissions on behalf of the Respondent.
11. Mr Malik advised that his letting agency, KPM Residential acted on behalf of the Respondent. Mr Malik accepted on behalf of the Respondent that the deposit had not been lodged on time and accepted that there had been a breach of the requirement to lodge the deposit into an approved scheme timeously.
12. He submitted that the Applicants moved in on 11 November 2019. He accepted that payment had been received by KPM Residential in October 2019. The deposit was not paid into an approved scheme until 30 December 2019. The deposit was paid late owing to an administrative error at KPM Residential. The error was made on the basis of KPM Residential's procedures at the time, which saw the deposit lodged with the scheme at the end of the month. The deposit was not noticed by the accounts team until the end of the month in December at which point they realised the deposit was late and immediately took steps to pay it into the Safe Deposit Scheme on 30 December 2019. That procedure has now changed since Mr Malik took over the management of KPM Lettings and deposits are now paid into an approved scheme within a matter of days from being received from the tenants.
13. Mr Malik confirmed that he did not inform the Applicants or the Respondent herself of the error. He submitted that the Applicants did not contact them to ask where the deposit had been lodged or to raise the fact that the deposit had been lodged late.
14. In terms of the level of sanction that was appropriate, Mr Malik submitted on behalf of the Respondent that the appropriate level was £750, being a sum equal to the deposit. He submitted that was appropriate due to the time the deposit was unprotected and the fact that as soon as the error was noticed, the deposit was lodged.

Findings in Fact

1. The Applicants and the Respondent entered into a Private Residential Tenancy in respect of the property at Flat 1, 9 Grosvenor Crescent, Glasgow, G12 9AF on 11 November 2019.
2. Prior to the commencement of the tenancy, the Applicants paid to the Respondent the deposit of £750 on 16 October 2019;
3. The deposit was paid to Safe Deposits Scotland on 30 December 2019.
4. The tenancy gave notice to end the tenancy on 28 January 2021 and the tenancy ended on 24 February 2021
5. The Applicants applied to this Tribunal on 18 March 2021;

6. The Respondent is not a local authority, registered social landlord or Scottish Homes
7. The Applicant and Respondent are not related.
8. The Respondent accepts that the tenancy deposit was not paid until 30 December 2019.

Reasons for Decision

15. The tenancy is a relevant tenancy for the purposes of regulation 3.
16. The Applicant made an application to the Tribunal timeously in terms of regulation 9, having lodged the application not later than three months after the end of the tenancy.
17. The Tribunal is satisfied from the information before it that the Landlord did not comply with her duty under regulation 3. The deposit was paid to Safe Deposits Scotland on 30 December 2019, being 33 working days after the commencement of the tenancy, rather than 3 working days.
18. The Tribunal has an “unfettered discretion” as to the level of penalty to be paid under regulation 10(a) (see *Fraser and Pease v Meehan* (2013 SLT (Sh Ct)) 119 per Sheriff Mackie at p 121). The Tribunal is also mindful of the need to proceed in a manner that is fair, proportionate and just having regard to the circumstances of the case including the seriousness of the breach and the purpose of the regulations (see *Tenzen v Russell* 2014 GWD 4-90; *Kirk v Singh* 2015 SLT (Sh Ct) 111; *Jenson v Fappiano* 2015 SC Edin 6).
19. The Tribunal has taken into account that the purpose of the regulations was to protect the tenancy deposit throughout the duration of the tenancy and for the parties to have access to the dispute resolution procedure should any issues arise on termination of the lease. The Respondents had a reasonable expectation that their deposit would be paid into an approved scheme timeously.
20. In this case, the Respondent was aware of her obligation to have the tenancy deposited into an approved scheme and had engaged Letting Agents to deal with the tenancy deposit on her behalf. She was personally unaware of the delay in lodging the deposit into an approved scheme until she received notification of the application having been made to the Tribunal. However, it is the Respondent, rather than her Letting Agents, who has the responsibility to comply with the Regulations.

21. The Respondent and her agents were candid in their acceptance that the deposit was not paid timeously into an approved scheme. The Respondent's Agents offered an explanation in mitigation as to why this particular deposit had been lodged late and advised that their procedures have since changed to ensure the same mistake does not happen again in relation to any other deposits. The Tribunal accepts that the error was one of unintentional oversight.
22. The Tribunal has taken into account the mitigation put forward on behalf of the Respondent including their submission that the breach was to the lower end of the scale and that the appropriate award would be a sum equal to the value of the deposit in the circumstances.
23. While the deposit was unprotected for 7 days (and 3 working days) beyond the date on which the deposit ought to have been lodged, the position was rectified, and the deposit protected for the majority of the tenancy.
24. The Tribunal considers that in the circumstances of this case and taking account of the submissions made by the parties, the breach of the regulations is towards the lower end of the scale of seriousness. The Tribunal does not therefore consider that it would be proportionate to award a sum equal to twice the value of the deposit as claimed by the Applicants.

Decision

25. In the whole circumstances of this case, the Tribunal exercises its discretion and orders the Respondent to make payment of the sum of £750 to the Applicants being a sum equal to the value of tenancy deposit. The Tribunal considers that sum to be fair, proportionate, and just in all the circumstances of the case.

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.

Lesley Johnston

6 May 2021

Legal Member/Chair

Date

