



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/21/0664

Re: Property at 8 Stanedyke Crescent, Lochmaben, DG11 1QY (“the Property”)

Parties:

Ms Kate Fellows, 5 Vendace Crescent, Lochmaben, DG11 1GA (“the Applicant”)

Mr Kevin Dickson, Mrs Jennifer Dickson, 3 Vendace Wynd, Lochmaben, DG11 1GB (“the Respondents”)

Tribunal Members:

Nairn Young (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

- Background

This is an application for an order for payment of a sanction under regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) in relation to an alleged failure on the part of the Respondents to pay a deposit paid by the Applicant in terms of her private residential tenancy of the Property to an approved scheme. It called for a case management discussion at 10am on 2 August 2021, by teleconference. The Applicant was represented on the call by Ms Stokes of College & Shields LLP, solicitors. The Respondents were represented by Mr Clark of Henderson and Mackay, solicitors.

- Findings in Fact

The relevant factual background is not in dispute between the parties, as follows:

1. The Respondents entered into a private residential tenancy agreement in relation to the Property with the Applicant with a start date of 18 May 2020.
2. In terms of that agreement, the Applicant paid a deposit of £425.
3. The tenancy came to an end on 17 December 2020.
4. An email was sent by the second-named Respondent to the Applicant on 4 December 2020 confirming the date of termination of the tenancy ('the termination email').
5. This application was sent to the Tribunal by email by the Applicant's agents on 17 February 2021.
6. It was not accompanied at that time by a copy of the termination email.
7. The Applicant's agent had not been given a copy of the termination email at the time the application was first sent to the Tribunal.
8. In response to a request from the Tribunal, the Applicant submitted a copy of the termination email on 13 April 2021.
9. This application was made on 13 April 2021.

- Reasons for Decision

10. Regulation 9 of the Regulations states:

“9.—

(1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made no later than 3 months after the tenancy has ended.”

11. Rules 5 and 103 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (‘the Rules’) state, so far as is relevant:

“5. Requirements for making an application

(1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rule ... 103

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

...

103. Application for order for payment where landlord has failed to carry out duties in relation to tenancy deposits

Where a tenant or former tenant makes an application under regulation 9 (First-tier Tribunal orders) of the 2011 Regulations, the application must—

(a) state—

(i) the name and address of the tenant or former tenant;

(ii) the name, address and profession of any representative of the tenant or former tenant; and

(iii) the name, address and registration number (if any) of the landlord;

(b) be accompanied by a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the tenant or former tenant can give;

(c) evidence of the date of the end of the tenancy (if available); and

(d) be signed and dated by the tenant or former tenant or a representative of the tenant or former tenant.”

12. The question that falls to be determined at this stage is a narrowly focussed one: standing the above provisions, was the application made timeously? The only basis upon which it is suggested that it may not have been is in connection to the failure to include the termination email with the application on 17 February 2021. Both parties are agreed that, if that failure should be found to be material, the application was made out of time: and that if the opposite finding is made, it was made in time. There is no dispute that the time limit for making the application was three months after the end of the tenancy. Neither is there any suggestion that the Tribunal has a discretion to

vary that time limit, should it find it was not complied with, or accept an application made late.

13. The whole issue therefore turns on the interpretation of the words, “if available,” as they appear in rule 103(c) of the rules. The Applicant’s representative’s submission was that these words apply to the individual completing and sending the application (in this case, the representative herself). As the termination email was not available to her when she sent the application on behalf of her client, it was not necessary to include it in terms of rule 103(c).
14. The Respondents’ representative’s submission was that, to the contrary, the relevant words had to apply to the Applicant. The termination email was available to the Applicant at the date the application was submitted and so should have accompanied the application in order for it to have been lodged in the required manner. The application was not therefore made until that information had been submitted in response to the Tribunal’s request.
15. Taken in isolation, the words, “if available,” may appear somewhat ambiguous; but the context of the rule as whole makes clear that they refer to availability to the applicant in the case. The rule begins, “Where a tenant or former tenant makes an application ... the application must...,” which focusses compliance with the requirements that follow on the applicant. The wording of sub-paragraph (b) reinforces that impression, by specifically requiring, “as much information about the tenancy as **the tenant or former tenant can give,**” (emphasis added), in circumstances where the tenancy agreement is not available. Given that the words, “be accompanied by,” are not repeated at the beginning of sub-paragraph (c), it would appear that sub-paragraphs (b) and (c) have to be read as part of one whole idea and the words, “if available,” interpreted consistently between the two provisions. Taking the opposite approach, it would be strange if an applicant could avoid having to provide the relevant information with the application simply by withholding it from their representative. (It is stressed that there is no suggestion that that was what took place in this case.)

16. All of these factors make it clear that the Respondents' interpretation of the relevant provision is to be preferred. The Tribunal therefore does not have jurisdiction to hear the application, it being time-barred, and the application falls to be dismissed in terms of rule 27(1) of the Rules.

- Decision

Application dismissed.

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.

Nairn Young

5th August 2021

Legal Member/Chair

Date