



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011/176

Chamber Ref: FTS/HPC/PR/21/0780

Re: Property at 12/29 Pilrig Heights, Edinburgh, EH6 5BB (“the Property”)

Parties:

Mr Robert Grindley, Ms Alicia De Gracia Sanchez, 12/29 Pilrig Heights, Edinburgh, EH6 5BB (“the Applicant”)

PICTURE LIVING PROPERTY LIMITED, 80 Cheapside, London, EC2V 6EE (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for payment in the sum of SEVEN HUNDRED POUNDS (£700.00) in favour of the applicants.

Background

1. By application dated 29th March 2021 the applicants sought an order for payment in terms of rule 103. The applicants lodged the following documents with the application:
 - Copy lease
 - Email from Safe Deposits Scotland dated 18th March 2021
 - Copy bank statement showing payment of the deposit to the respondent on 26th February 2020
2. The respondent lodged written representations setting out their position by email dated 7th June 2021.

Case management discussion (“cmd”) – 21st June 2021 – teleconference

3. Both applicants attended the cmd. The respondent was represented by Mark Bonner, Picture Living Property Ltd. Claire Horsey from Touchstone Corporate Property Services Limited was also in attendance.
4. Mr Grindley spoke on behalf of the applicants. He confirmed that the applicants had moved into the property after signing the lease on 5th March 2020. The deposit payable in terms of the lease was £1148.08. Mr Grindley explained that he became aware that the tenancy deposit had not been placed in a tenancy deposit scheme on 18th March 2021 when he received an email from Safe Deposits Scotland. A copy of the email had been lodged with the application. It stated that the deposit had been received on 17th March 2021 and had not been lodged within the 30 day period required by the regulations. The email explained that an application could be made to the Tribunal.
5. Mr Grindley stated that he had not had reason to contact his landlords regarding the deposit prior to receiving the email. The applicants continue to reside in the property.
6. Mr Bonner confirmed that the deposit had been unprotected from 5th March 2020 to 17th March 2021. He explained that the failure to lodge the deposit had been due to an administrative error. The error occurred at the time of the coronavirus lockdown when there was a transition to homeworking and systems were being adjusted. Mr Bonner advised that Picture Living Property Limited was the owner and landlord of the property. The tenancy was managed by Touchstone Corporate Property Services Limited.
7. Claire Horsey from Touchstone confirmed that they managed the property. The error in failing to lodge the deposit in the appropriate tenancy deposit scheme occurred as the organisation were transitioning to home working. The error was noticed when a reconciliation of tenancy deposits was carried out in March 2021. She advised that immediate action was taken to rectify the error by placing the deposit in a recognised scheme.
8. Mr Bonner explained that the respondent owned over 300 properties. This was the first time there had been a failure in lodging a deposit with a tenancy deposit scheme which led to an application to the Tribunal. He stated that a reconciliation of deposits now takes place on a monthly basis to ensure errors are noted. He explained that processes are in place to ensure that deposits are placed in deposit schemes as required by the regulations. Mr Bonner expressed regret at the failure to place the deposit in the scheme as required and agreed with Mr Grindley that the landlord should have contacted the applicant's after the error was noticed to acknowledge the mistake and provide reassurances.

Findings in fact

9. Parties entered in a private residential tenancy agreement with a commencement date of 5th March 2020.
10. A deposit of £1148.08 was paid by the applicants at the commencement of the tenancy.
11. The respondent had failed to lodge the deposit in a tenancy deposit scheme as required in terms of regulation 3 of the [Tenancy Deposit Schemes \(Scotland\) Regulations 2011/176](#) in the period from 5th March 2020 to 17th March 2021.
12. The respondent failed to lodge the deposit in a suitable scheme due to an administrative error by the property managers, Touchstone Corporate Property Services Limited.

13. The administrative error occurred during the transition to home working as a result of the coronavirus pandemic.
14. The respondent is an experienced landlord with a portfolio in excess of 300 properties.
15. The respondent lodged the deposit in a suitable scheme as soon as reasonably possible after they became aware of the failure to lodge the deposit as required by the regulations.

Reasons for the decision

16. The Tribunal took into account the parties written and oral submissions and the various documents lodged in advance of the cmd.
17. The facts of the case were largely agreed by the parties. The Tribunal was satisfied that the respondent had failed to place the deposit in a suitable tenancy deposit scheme. Accordingly, regulation 10 applied. The Tribunal required to determine the level of award to be made under regulation 10 up to a maximum of three times the amount of the deposit.
18. The Tribunal found all parties to be credible and honest in their representations. The Tribunal took into account that the deposit had been unprotected for a period of twelve months. The Tribunal took into account the amount of the deposit and the fact that the respondent was an experienced landlord of multiple properties. The Tribunal took into account that after the error had come to the respondent's attention neither they nor their property managers contacted the applicants to provide an explanation for the failure to place the deposit in a suitable scheme.
19. The Tribunal noted that the respondent accepted that there had been a breach of the regulations. The Tribunal took into account that the failure had been due to an administrative error which occurred during the transition to home working as a result of the coronavirus pandemic. The Tribunal accepted that the breach had been unintentional and had been remedied as soon as reasonably practicable after the respondent's property manager became aware of the error.
20. The Tribunal accepted Mr Bonner's evidence that no future breaches of the regulations were likely.
21. Taking the above factors into consideration the Tribunal determined that the respondent's breach of the regulations was at the less serious end of the scale and in the circumstances an order in the sum of £700 was fair and just.

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.


Mary-Claire Kelly
Legal Member/Chair

21st June 2021
Date