



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

Chamber Ref: FTS/HPC/PR/21/1709

Re: Property at 43/1 Harewood Crescent, Edinburgh, EH16 4XS (“the Property”)

Parties:

Miss Robyn Faye Stewart-Evans, Mr Craig James Duffy, 43/1 Harewood Crescent, Edinburgh, EH16 4XS (“the Applicant”)

Edinburgh Living LLP, Waverly Court, 4 East Market Street, Edinburgh, EH8 8BG (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order in the sum of one thousand three hundred and ninety pounds (£1390) against the Respondent

Background

- 1 The Applicants applied to the Tribunal under regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”) seeking an order for payment as a result of the Respondent’s failure to lodge their tenancy deposit with a tenancy deposit scheme.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 19 October 2021.
- 3 By email dated 15th October 2021, Ms Megan Anderson, Solicitor, submitted written representations on behalf of the Respondent. In summary, she confirmed that the Respondent accepted they had breached the Tenancy

Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”). The Respondent was actively investigating the cause of the failure with their agent, Lowther Homes, and would look to put in place robust procedures to prevent a similar situation from occurring in future. The deposit had now been lodged with an approved tenancy deposit scheme.

The Case Management Discussion

- 4 The Case Management Discussion took place on 19th October 2021. The Applicants were both present, however Mr Duffy confirmed that he would address the Tribunal on behalf of both himself and Miss Stewart-Evans. The Respondent was represented by Ms Anderson.
- 5 The Legal Member explained the purpose of the Case Management Discussion and the legal test. She noted that the Respondent accepted they had breached the 2011 Regulations, therefore the issue for the Tribunal to determine was what level of sanction was appropriate having regard to the nature of the breach and circumstances surrounding same. She asked both parties to address her on this issue.
- 6 Mr Duffy explained that it had been 163 working days since the Applicants had moved into the property. The Respondent was therefore 133 days late in registering the deposit. Mr Duffy explained that they had made the Respondent’s agent aware that the deposit had not been lodged 128 days ago. They had contacted Lowther Homes via the property manager and through the general correspondence address. The response was unsatisfactory. The agent had said there had been a delay and they would sort it out as soon as possible. There was no excuse for not lodging the deposit with a deposit scheme. The Applicants therefore felt that a significant sanction should be imposed on the Respondent. Mr Duffy noted that they were not a small company, they have a considerable operating turnover of around £2.6 million. They are a large landlord with a significant number of properties. Mr Duffy explained that theirs was not the only case where there had been a breach, he understood there would be other applications coming forward to the Tribunal. He felt that the Respondent should take responsibility for the failure and therefore the maximum award should be applied. Mr Duffy confirmed that he had received confirmation that the deposit had been registered with a deposit scheme but the funds had not yet been received.
- 7 Ms Anderson confirmed that the Respondent accepts the tenancy began on 10 May 2021 and the deposit was received by Lowther Homes on that date. The Respondent fully accepted that they had a duty to lodge the deposit within thirty working days of the beginning of the tenancy and failed to do so. They were actively investigating the root cause of this issue, with the intention of reviewing and implementing procedures to ensure compliance with the 2011 Regulations going forward. The deposit had been lodged with Safe Deposits Scotland on 15 October 2021 and the Applicants should receive confirmation of this in early course. Ms Anderson opined that a sanction at the lower end of the scale would be appropriate in the circumstances of this particular case. The deposit had now been registered and the Applicants

would not lose out as a result. Ms Anderson explained that she understood there were other applications pending before the Tribunal in relation to similar issues but she could not speak to those. The Respondent wished to apologise for the error.

Relevant Legislation

8 The relevant legislation is contained within the Tenancy Deposit Scheme (Scotland) Regulations 2011 which provide as follows:-

“3.—(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—

(a) pay the deposit to the scheme administrator of an approved scheme; and

(b) provide the tenant with the information required under regulation 42.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

(a) in respect of which the landlord is a relevant person; and

(b) by virtue of which a house is occupied by an unconnected person,

unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.”

“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 by summary application and must be made no later than 3 months after the tenancy has ended.”

“10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(b) may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to—

(i) pay the tenancy deposit to an approved scheme; or

(ii) provide the tenant with the information required under regulation 42.”

Findings in Fact and Law

- 9 The Applicants and Respondent entered into a tenancy agreement in respect of the property which commenced on 10 May 2021.
- 10 The said Tenancy Agreement provides for a deposit of £695 to be paid by the Applicants to the Respondent.
- 11 The Applicants paid the deposit of £695 to the Respondent at the start of the tenancy.
- 12 The Respondent did not register the deposit with a tenancy deposit scheme until 15th October 2021.
- 13 The Applicants alerted the Respondent's agent to the fact that the deposit had not been lodged with a scheme in June 2021.
- 14 The Respondent is in breach of Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 by virtue of her failure to lodge the deposit within an approved tenancy deposit scheme and provide the Applicants with the prescribed information within thirty working days of the commencement of the tenancy.

Reasons for Decision

- 15 The Tribunal determined the application having regard to the application paperwork, the written representations from both parties and the evidence heard at the hearing. The Tribunal considered it had sufficient information upon which to make a proper determination of the application.
- 16 The failure to comply with Regulation 3 was admitted by the Respondent in this case, and therefore Regulation 10 was engaged. On that basis the Tribunal had to consider what level of sanction would be appropriate having regard to the particular circumstances surrounding the breach.
- 17 The Tribunal considered the requirement to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach. In doing so the Tribunal took into account the fact that there had been a persistent failure on the part of the Respondent to lodge the deposit with a scheme, even after their agent had been notified that this had not been done. It had taken an application to the Tribunal to prompt them into action in this regard, it having been noted that the deposit had not been lodged until the week before the Case Management Discussion. The Tribunal therefore found it difficult to accept that this was a mere oversight on the Respondent's part. The Tribunal also took into account the fact that this appeared to be a systemic issue, not something that was restricted to one tenancy, and the

Respondent was a professional landlord with a significant number of properties. It was therefore incumbent upon them to ensure that processes were in place to ensure any legal duties were complied with, regardless of whether or not they were employing the use of an agent. On that basis it was difficult to see any reasonable excuse for the breach, and indeed no detailed explanation as to precisely why the deposit had not been lodged had been forthcoming from the Respondent.

- 18 The Tribunal could not ignore the purpose of the 2011 Regulations, namely to penalise landlords to ensure they comply with the duty to protect and safeguard tenancy deposits. The provisions of Regulation 10 leave the Tribunal with no discretion where a landlord is found to have failed to comply and permit an award of up to three times the deposit. In this case, the Tribunal did not consider an award at the maximum end of the scale was warranted, particularly as the deposit had now been registered and the Respondent had shown remorse and a will to put procedures in place to prevent the situation arising in future. Balancing the competing factors in the particular facts and circumstances of this case, the Tribunal therefore considered therefore that a sanction in the sum of £1390 would be appropriate, being a sum equivalent to twice the deposit.
- 19 The Tribunal therefore made an order against the Respondent in the sum of £1390.

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.

Ruth O'Hare

Legal Member/Chair

Date: 19th October 2021