



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

Chamber Ref: FTS/HPC/PR/21/2078

Re: Property at 42 Whitehouse Gardens, Gorebridge, Midlothian, EH23 4FQ (“the Property”)

Parties:

Miss Tanya Palkowski, 22 Auld Coal Loan, Bonnyrigg, EH19 3RR (“the Applicant”)

Mr Jamie Sharp, 22 Cadwell Crescent, Gorebridge, Midlothian, EH23 4NG (“the Respondent”)

Tribunal Members:

Lesley-Anne Mulholland (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an Order for Payment from the Respondent in favour of the Applicant in the sum of £1,700

BACKGROUND

1. The Applicant is the former tenant of the property 42 Whitehouse Gardens, Gorebridge, Midlothian, EH23 4FQ (“the Property”). The Respondent is the owner and Landlord of the property. The Applicant seeks a Payment Order for the failure of the Respondent to pay the deposit into a safe deposit scheme.
2. On 9th September 2021 a Legal Member of the First-tier Tribunal with delegated powers of the Chamber President, considered the application paperwork and accepted that the application as validly made.
3. The Case Management Discussion took place remotely by telephone on 22nd October 2021. I am grateful to those present for agreeing that the hearing could

proceed remotely during the current pandemic. The Applicant and the Respondent were present and unrepresented. The Respondent was supported by his spouse. There were no apparent difficulties with sound or connectivity issues. I am satisfied that those taking part in the discussion had a reasonable opportunity to put their points across and that the discussion was fair. No complaint about the lack of effective participation caused by the remote hearing was brought to my attention.

4. The Applicant outlined the reasons for the application. In summary, the Applicant submits that the Respondent dishonestly withheld the deposit for a period of 3 years and lodged it with a Safe Deposit Scheme only after it the Applicant had been served with notice that the Landlord wished her to vacate the property. She checked with the Safe Deposit Schemes and established that the Landlord had failed to protect her deposit. I was asked to use my discretion in relation to the amount to be awarded.
5. In support of the Applicant's averments, I was asked to consider that the deposit should have been paid into a Safe Deposits Scheme within 30 days. The Respondent had confirmed to her at the commencement of the tenancy that he had opened an account with a Safe Deposit Scheme. The Applicant finds it difficult to accept that the Respondent would not have noticed that her deposit had not been protected as he would have retained this and must have noticed that his capital balance in his bank account was wrong. The Respondent would have had the deposit available to him during the 3-year period to use as he liked.
6. The Respondent accepts that he failed to place the deposit into a Safe Deposit Scheme for a period of around 3 years. He had intended to do so and believed that he had. In mitigation, he said that he had moved home and got married around the same time as the deposit was given to him and it was a genuine oversight for which he apologised. When the matter came to his attention, he took immediate steps to resolve this and placed the deposit into a Safe Deposit Scheme and the full deposit has been returned to the Applicant.

FINDINGS IN FACT

7. The Applicant took up occupancy of the property on 1 July 2018 and paid a deposit of £850 to the Respondent on the same day.
8. The Respondent did not pay the deposit into an approved scheme within 30 days as required by law. The deposit was not placed into a safe deposit scheme from 1 July 2018 until 18 August 2021.
9. The deposit has been returned to the Applicant.

ANALYSIS AND CONCLUSIONS

10. I have proceeded on the basis of the documents and representations, together with oral submissions.

11. Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 provides:

(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.

12. Regulation 10 of the Tenancy Deposit Regulations provides:

'If satisfied that the landlord did not comply with any duty in regulation 3, the First-tier Tribunal:

(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 First-tier Tribunal 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.

13. As the Respondent accepts that he failed to pay the deposit into an approved scheme, there is little in dispute between the Parties. The only matter for me to determine is the level of compensation to be paid to the Applicant.

14. I have carefully taken into account that the Respondent was getting married and moving house around the time the deposit was paid. I am satisfied that this caused the Respondent to lose track of his finances. Accordingly, I accept the Respondent's explanation that the failure to lodge the deposit into a Safe Deposit Scheme in time was an innocent oversight, that he has apologised and that the full deposit has been refunded to the Applicant.

15. Regulation 10 of the 2011 Regulations provides that where there has been a breach of Regulation 3 and Regulation 9 has been satisfied, the Tribunal **must** impose a sanction of up to three times the deposit paid by the Tenant.

16. Any award under Regulation 10 is required to reflect a sanction which is fair, proportionate and just given the circumstances (Jensen v Fappiano 2015 GWD 4-89). In Tenzin v Russell 2015 House. L.R. 11 it was held that any payment in terms of Regulation 10 is the subject of judicial discretion after careful consideration of all the circumstances.

17. I have taken into account that the Applicant's deposit remained unprotected for a period of around 3 years. This is a serious breach. Weighing everything up,

individually and together, I have determined the appropriate sanction to be the equivalent of two times the deposit. Accordingly, the Respondent is sanctioned to make payment of compensation to the Applicant in the sum of £1,700.

DECISION

An Order for Payment is granted in the amount of £1,700.

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-Anne Mulholland

Legal Chair

22 October 2021
Date