



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under the Housing (Scotland) Act 2006 section 121 and Regulation 9 the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/22/3994

Re: Property at Flat 0/1, Burnbrse Cottage, Millbrae, PA11 3LD (“the Property”)

Parties:

Dr Lauren Copeland, Mr Patrick Vigurs, 17 Barochan Lane, Brookfield, PA5 8US; 17 Barochan Lane, Brookfield, PA5 8US (“the Applicant”)

Ms Lynnel Farrow, Flat 0/1, Burnbrse Cottage, Millbrae, PA11 3LD (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Landlord is in breach of her obligations in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“Regulation 3”). The Respondent shall make payment to the Applicant in the sum of SIX HUNDRED POUNDS (£600) STIRLING.

Background

1. The Housing and Property Chamber received an application from the Applicant in terms of Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017 which was dated 23rd October 2022. The Application included a lease which detailed that a deposit of £400 had been paid.
2. On 7th November 2022, all parties were written to with the date for the Case Management Discussion (“CMD”) of 9th February 2023 at 10am by teleconferencing. The letter also requested all written representations be submitted by 5th January 2023.

3. On 16th December 2022, sheriff officers served the letter with notice of the CMD date and documentation upon the Respondent by leaving it in the hands of Mr Buhari Momodu at the Respondent's address. This was evidenced by Certificate of Intimation dated 16th December 2022.
4. On 8th February 2023, Dr Copland emailed the Housing and Property Chamber to advise that she would not be able to attend the CMD but to continue in her absence and the Mr Vigurs would speak on her behalf.
5. A CMD was held on 9th February 2023 at 10am by teleconferencing. Mr Patrick Vigurs appeared on behalf of both Applicants. The Respondent was not present nor represented. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make any representations in advance of the CMD. Mr Vigurs told the Tribunal that the Applicants had chosen to stay in this property as they could rent it for a short time. They had just sold their house and were waiting for the house they had purchased to be finished being built. It was difficult to find a property to let. This was the only one which they could find. They had numerous problems throughout the tenancy. Mr Vigurs told the Tribunal that the local council had said that there was an ASBO against the Respondent and that the Applicants were not required to pay their rent. The Applicants continued to pay their rent. He also noted that, at least at that time, the Respondent was not a registered landlord though that may have changed now. The Tribunal asked Mr Vigurs if he was able to clarify the date that the tenancy had commenced. He said that Dr Copeland dealt with much of the start of the tenancy but she was not able to attend today. An email was submitted to the Tribunal dated 18th March 2022 but it was very faint and difficult to read. Mr Vigurs will see if a better copy could be forwarded to the Tribunal. The Tribunal is focused on where the Tenancy Deposit Schemes (Scotland) Regulations 2011 had been adhered to with a deposit being lodged within an approved scheme within 30 days. It is important for the Tribunal to know the date of the start of the lease and that the deposit was paid to the Applicant. The Tribunal decided to continue the CMD to another date to allow further evidence to be submitted by the Applicants. The Tribunal noted that it wanted clarification on the start date of the tenancy and any evidence to show that a deposit was lodged. The Tribunal listed items that would be useful in the CMD note. The case was continued to a further CMD to allow the Applicants to submit further evidence of the start date of the tenancy and any evidence that they consider to support their position.

The Case Management Discussion

6. A CMD was held on 10th May 2023 at 10am by teleconferencing. Both Applicants were present and represented themselves. The Respondent was present and represented herself.
7. The Respondent told the Tribunal that she had taken a deposit of £400 from the Applicants. She had put it into a bank account. She did not lodge it with an approved tenancy deposit scheme within 30 days. She has one property that she has been letting out since 2007/2008. She has never put any of the

deposits that she had received into a deposit scheme. The Scheme had not existed when she had started to be a landlord and she had not considered to check if she had further legal obligations as the years went on. The Respondent said that the deposit remains in her bank account. She noted that she disputed that it should be returned in its entirety to the Applicants. The Tribunal noted that the return of the deposit was not an issue for it when deciding on a Rule 103 case. The Tribunal will issue a direction for the deposit to be lodged in an approved deposit scheme. The Respondent stated that she had concerns about returning the deposit in light of costs that she had from the end of the tenancy. The Tribunal noted that once the deposit was lodged within an approved scheme then the scheme would make a decision. Parties would need to raise any issues with the scheme. The Respondent said that she was content to lodge the deposit in the scheme and comply with the direction. The Respondent said that the Property was now empty as she is trying to sell it.

8. The Applicants disputed the reasons that the Respondent claimed in terms of the return of the deposit. The Tribunal noted that this was not for the Tribunal in this case to look at wider aspects of tenancy issues but noted that the Respondent's evidence regarding the specifics of returning the deposit were disputed. This will be a matter for the tenancy deposit scheme to decide upon. The Tribunal had asked questions about the deposit to determine the level of the penalty. The Tribunal noted that the Applicants position had been set out at the CMD on 9th February 2023. The Applicants agreed that this was still their position.
9. The Tribunal considered the lateness of the deposit being lodged. The Respondent admitted the breach. It is a breach of the regulations. The Respondent has not ensured that she has been meeting her legal obligations as a landlord over the years that she has had the Property. As such she has failed to take account of the tenancy deposit requirements. The Property is now empty and she is selling it. The Tribunal noted this along with her engagement with this CMD and willingness to lodge the deposit in an approved scheme. The Tribunal can issue a penalty of up to 3 times the amount of the deposit. The Tribunal considered a penalty of one and half times the deposit was appropriate.

Findings and reason for decision

10. A Private Rented Tenancy Agreement commenced 21st March 2022.
11. A deposit of £400 was paid at the start of the tenancy. The tenancy ended on 12th August 2022.
12. The Respondent has kept the deposit in her bank account. The Respondent admitted that she did not lodge the deposit in an approved tenancy deposit scheme within 30 days from the start of the tenancy. This is a breach of the regulations.

13. The Respondent will now lodge the deposit in the scheme. This will allow for the deposit scheme to assess any disagreement as to whether the deposit should be returned or not.
14. The Respondent has been a landlord since 2007/2008. She has never lodged any tenants deposits in a tenancy deposit scheme. She has not kept herself aware of her legal obligations towards her tenants. This is the only property that she has. The Property is currently empty as she is selling it.
15. The Respondent has failed to comply with the regulations to ensure that the deposit was lodged in an appropriate scheme within 30 days from the start of the tenancy. The Respondent admitted this to the Tribunal.

Decision

16. The Respondent has a duty under Regulation 3 to place the deposit in an approved scheme within the specified time but failed to do so. The Respondent engaged with the process after the initial CMD when the paper work for that CMD was served by sheriff officers. She has never lodged a tenancy deposit within an approved scheme for the entire time that she has been a landlord. She is now to lodge the deposit in a scheme. The Tribunal decided that a fair, just and proportionate sanction would be to order the Respondent to pay the Applicants one and a half times the amount of the deposit (£600.00).

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.

10th May 2023

Legal Member/Chair

Date