



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

Chamber Ref: FTS/HPC/PR/21/2789

Re: Property at Flat 1/2 25 Huntingdon Road, Glasgow, G21 1RS (“the Property”)

Parties:

Mr Rahim Mukhtar, Fettykil house, Norman place, Glenrothes, Fife, KY6 3AR (“the Applicant”)

Mr Shengchun Yao, 10 Allsop Court, Kilmaurs, Kilmarnock, KA3 2LZ (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Landlord is in breach of his 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 £200 (TWO HUNDRED POUNDS STIRLING)

Background

1. The Tribunal 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 signed on 9th November 2021. The Application included details that a deposit of £200 had been paid.
2. On 3rd February 2022 , sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service and by post. This was evidenced by Certificate of Intimation dated 3rd February 2022.

3. A CMD was held on 15th March 2022 at 2pm by teleconferencing. The Applicant attended and represented himself. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent had lodged a submission stating that he does not consider that a deposit needs to be lodged within an approved scheme as the tenancy is not a Private Rented Tenancy ("PRT"). He also stated that the deposit was in case rent was due in term of the lease. The correct lease to use was a PRT not the lease that was signed by parties. The Tribunal noted that a tenancy created after 1st December 2017 it is a PRT. The fact that the lease is not written as a PRT is not relevant as per section 3 of the Private Housing (Scotland) Act 2016. The Applicant confirmed that the Respondent did not live in the Property with him. The Tribunal continued the case to allow for the Respondent to lodge the deposit in an approved scheme. The Tribunal issued a direction for the deposit to be lodged in a scheme.
4. On 14th April 2022 all parties were written to by email with the date for the Case Management Discussion ("CMD") of 9th May 2022 at 10am by teleconferencing.
5. On 1st April the Applicant emailed a copy of the Deposit Protection Certificate from My Deposits Scotland stating that £200 was lodged on 31st March 2022.
6. On 29th April 2022, he Applicant further lodged the Landlord's duty to provide information to the Tenant.
7. This case is conjoined with CV/22/0078.

The Case Management Discussion

8. A CMD was held 9th May 2022 at 10am by teleconferencing. The Applicant was not present and not represented. The Respondent was present. The Tribunal proceeded in terms of Rule 29 of the Rules without the Applicant present.
9. The Tribunal noted that the deposit had been lodged in an approved scheme as per the direction of 15th March 2022. A copy of this certificate had been lodged with the Housing and Property Chamber by the Applicant. The Respondent stated that he had kept the deposit as a security deposit. The Applicant had only undertaken the lease for a short period of time. He had not been aware of the regulations and his legal obligations. He is considering taking advice on his practices but now understands that all deposits must be lodged in an approved scheme. The Respondent noted that he has now started to use the Government Model PRT.
10. The Tribunal considered that there had been a breach in Regulations. The Tribunal noted that the Respondent has engaged with the Process and had lodged the deposit in an approved scheme within the specifications of the direction issued by the Tribunal.

Findings and reason for decision

11. A Private Rented Tenancy Agreement commenced 17th August 2021.
12. A deposit of £200 was paid by the Applicant to the Respondent at the beginning of the Tenancy.
13. The deposit was not lodged in an appropriate scheme. The Respondent was issued a direction to lodge the deposit in an appropriate scheme within 21 days of 15th March 2022. The deposit was lodged with My Deposits Scotland on 31st March 2022. This is outwith 30 days from the start of the tenancy. This is a breach of the Regulations.
14. 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.

Decision

15. 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 did engage with the Tribunal process and lodged the deposit in the terms of the Tribunal direction of 15th March 2022. The Tribunal decided that a fair, just and proportionate sanction would be to order the Respondent to pay the Applicant one times the amount of the deposit (£200.00).

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.

Gabrielle Miller

9th May 2022

Legal Member/Chair

Date