



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 on an application made under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/22/3799

Re: Property at Flat 0/2, 117 Alexandra Park Street, Glasgow, G31 3HU (“the Property”)

Parties:

Ms Madeleine Anderson, Mr Finlay McCarthy, 71 Croftend Avenue, Glasgow, G44 5PE (“the Applicants”)

Ms Deborah Cummiskey, 21 Windmill Road, Hamilton, ML3 6LX (“the Respondent”)

**Tribunal Member:
George Clark (Legal Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted without a Hearing and made an Order for Payment by the Respondent to the Applicants of the sum of Two hundred and fifty Pounds (£250).

Background

By application, received by the Tribunal on 17 October 2022, the Applicants sought an Order for Payment in respect of the failure of the Respondent to comply with Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicants’ complaint was that the Respondent had failed to lodge their deposit of £450 in an approved tenancy deposit scheme.

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties, commencing on 31 October 2020 at a rent of £450 per month, with a deposit of £450. The Applicants also provided with the application confirmation from SafeDeposits Scotland that the deposit was lodged with them on 20 May 2021 and from My Deposits Scotland and LPS Scotland that the deposit had not been lodged with them. The Applicants were seeking an Order for Payment of three times the amount of the deposit.

On 25 November 2022, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 16 December 2022. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 12 January 2023. The Applicants were not present or represented. The Respondent was present. She told the Tribunal that, due to her husband's health, she had had to self-isolate during the COVID-19 pandemic and had not been able to attend the Property at the commencement of the lease. She had noted incorrectly in her own records that it had started on 1 October 2020, so when she received two payments of £450 at the beginning of November, she had assumed they were for the October and November rent. It was only when her accountant was looking at her records in the following May, that the Respondent's mistake was picked up and she realised that one of the payments in November 2020 had been the deposit. She immediately lodged £450 with SafeDeposits Scotland. She told the Tribunal that the failure to lodge it at the commencement of the tenancy was completely inadvertent and that she had returned the deposit in full when the tenancy ended.

Findings in Fact

- The Parties entered into a lease of the Property which commenced on 31 October 2020.
- A tenancy deposit of £450 was paid to the Respondent.
- The Respondent failed to lodge the deposit in an approved tenancy deposit scheme within 30 working days of the commencement of the tenancy and did not lodge it until 20 May 2021.
- The tenancy ended on or about 17 September 2022.
- The deposit was repaid in full to the Applicants.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it would determine the application without a Hearing.

Under Regulation 3(1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"), a landlord must, within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme. Under Regulation 10, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal **must** order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit.

The view of the Tribunal was that the Respondent had not acted wilfully in failing to lodge the deposit and accepted that it had been an inadvertent error on the Respondent's part. The Tribunal was satisfied that this had not been an attempt by the Respondent to avoid her obligations, but the consequence had been that the Applicants had been denied the essential safeguard provided by the 2011 Regulations, namely the right to have had any claim made by the Respondent against the deposit determined independently by Safe Deposits Scotland, should the tenancy have ended prior to 20 May 2021.

Having considered all the facts and circumstances of the case, the Tribunal decided to order the Respondent to pay to the Applicants the sum of £250. This was a figure that the Tribunal regarded as fair, proportionate and just, as, although the Applicants did not in fact suffer any loss as a result of the Respondent's failure to lodge the deposit timeously, their deposit was at risk for some 7 months.

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.

George Clark

Legal Member/Chair

12 January 2023

Date