



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 and Regulations 3 and 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/21/2113

Re: Property at 33/11 Peffer Bank, Edinburgh, EH16 4FE (“the Property”)

Parties:

Mr Eddie Oliver, 16 Baird Drive, Edinburgh, EH12 5SA (“the Applicant”)

Mrs Angela Muir, 11 Castlepark Glade, Edinburgh, EH15 4GA (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be determined without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £25.

Background

1. By application, received by the Tribunal on 1 September 2021, the Applicant sought an Order for Payment in respect of the Respondent’s failure to comply with the requirement to lodge a tenancy deposit in an approved Tenancy Deposit Scheme, as required by The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 1 October 2011, which provided for a tenancy deposit of £639.

3. On 21 September 2021, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations to the Tribunal by 12 October 2021.
4. On 11 and 12 October 2021, the Respondent made written representations to the Tribunal. She stated that the deposit was lodged with Letting Protection Scotland and that the Applicant had been informed at the time. She provided copies of a document addressed to the Applicant which stated that the deposit had been paid to a tenancy deposit scheme on 10 November 2011, an email from Letting Protection Scotland timed at 08.48 on 14 November 2011, confirming that the deposit had been received, and a letter from the Respondent to the Applicant dated 14 November 2011, providing the information required under Regulation 42 of the 2011 Regulations.

Case Management Discussion

5. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 25 October 2021. The Parties both participated in the conference call.
6. The Respondent told the Tribunal that the Applicant had suffered no loss or inconvenience and that the matter had been raised in an unrelated dispute between the Parties in 2017, but the Applicant had not pursued it further at that time.

Reasons for Decision

7. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides 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 to enable it to decide the application without a Hearing.
8. Under Regulation 3(1)(a) of 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 and provide the tenant with the information required under Regulation 42. Under Regulation 10 of the 2011 Regulations, 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.
9. The Tribunal noted that the tenancy commenced on 1 October 2011 and calculated that the last date for lodging the deposit in an approved tenancy deposit scheme was Wednesday 9 November 2011. It appeared to have been paid one day later, but the confirmatory email from the tenancy deposit company was dated Monday 14 October. It had, therefore, been lodged between one and three working days late. Noting the time of the email from

Letting Protection Scotland, namely 08.48 on a Monday morning, the Tribunal determined, on the balance of probabilities, that the deposit must have been with them by the afternoon of Friday 11 November 2011, so was, at most, two working days late. Nevertheless, the Respondent had failed to comply with Regulation 3(1)(a) of the 2011 Regulations and the Tribunal was bound to make an Order for Payment against her.

10. The Tribunal was satisfied that the Respondent's failure to lodge the deposit timeously had not been wilful. The delay had been only two days, so the risk of prejudice to the Applicant had been minimal.
11. Having taken into account all the evidence, written and oral, presented to it, the Tribunal decided that an appropriate sum to order the Respondent to pay to the Applicant under Regulation 10 of the 2011 Regulations was £25.

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.

G. Clark

Legal Member/Chair

25 October 2021
Date