



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/21/2239

Re: Property at 165 Bilsland Road, Glenrothes, KY6 2EE (“the Property”)

Parties:

Mr Colin Brennan and Mrs Claire Brennan, 20 Lovat Road, Glenrothes, KY7 4RU (“the Applicant”)

Mr Terence Fraser and Mrs Debbie Fraser, 14 Morlich Gardens, Glenrothes, KY7 4GB (“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, that the Respondent had failed to comply with the duty imposed on them by Regulation 3(1)(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and made an Order for Payment by the Respondent to the Applicant of the sum of £750.

Background

1. By application, received by the Tribunal on 14 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 Tenancy Agreement between the Parties commencing on 30 October 2017 and a further document indicating that the tenancy had been extended from 13 November 2018 to 30 October 2019. The rent was £500 per month and there was a £500 deposit. The Applicant also provided copies of text messages between the Parties which indicated that the tenancy ended on 11 July 2021. There were subsequent text messages between the Parties regarding the condition in which the Property had been left by the Applicant. The Respondent's view was that the issues raised by the Applicant were very minor and/or were the result of fair wear and tear. In the course of the correspondence, the Respondent sent photographs and stated that "This is not over". The Applicant responded by saying that they were happy to go to arbitration or court and asked the Respondent to confirm which of the tenancy deposit schemes held the deposit.
3. On 12 October 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 by 2 November 2021. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

4. A Case Management Discussion was held by means of a telephone conference call on the morning of 13 January 2022. The Applicant, Mr Brennan, and the Respondents, Mr and Mrs Fraser, participated in the Case Management Discussion.
5. The Tribunal Chair told the Parties that he was not able to make any determination as to whether the Respondent had been entitled to set off against the deposit any sums in respect of rent or repairs. The Tribunal's sole function was to determine whether the deposit had been paid into an approved tenancy deposit scheme and, if it had not been lodged with a scheme, the level of sanction that the Tribunal should order the Respondent to pay to the Applicant in respect of that failure.
6. The Respondent accepted that the deposit had not been paid into an approved scheme. They were inexperienced landlords and had only this one rented property. It had only been rented out once before, to a family member, and no deposit had been taken. The Respondent had been unaware of the requirement to lodge the deposit in an approved scheme.
7. The Applicant told the Tribunal that he wished to place on record the fact that the Respondent had been excellent landlords and he was very sorry that the relationship had broken down after the tenancy ended, but the Respondent had not repaid any part of the deposit and the Applicant had been deprived of the opportunity to have the matter settled by the independent adjudication of a tenancy deposit scheme.

8. The Tribunal Chair said that he would consider everything that the Parties had said and would then determine what he considered to be a fair and reasonable amount to order the Respondent to pay to the Applicant. The Parties then left the conference call.

Reasons for Decision

9. 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.
10. 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.
11. The Tribunal noted that the Respondent accepted that they had failed to lodge the deposit in an approved tenancy deposit scheme, so the only matter for the Tribunal to determine was the amount that the Respondent should be ordered to pay to the Applicant, the maximum figure being three times the amount of the deposit, namely £1,500.
12. The Tribunal noted the Respondent's explanation in mitigation that they were unaware of the tenancy deposit scheme, as they were inexperienced landlords who had never taken a deposit before. Ignorance of the law is, however, no excuse, and the fact that the deposit was not lodged in an approved scheme had placed the Applicant in a disadvantageous position when the Respondent had insisted that deductions were made from it and, indeed, had retained the entire deposit. Both Parties had been deprived of the opportunity to have their competing claims independently adjudicated, one of the principal reasons for the 2011 Regulations having been introduced. In addition, the Applicant's deposit had been at risk for the entire duration of the tenancy, a period of more than four and a half years. It did not, however, appear to the Tribunal that the Respondent's failure had been wilful.
13. Having considered carefully all the facts and circumstances of the case, the Tribunal decided that £750 was a fair and reasonable sum to require the Respondent to pay to the Applicant in respect of the failure to comply with the 2011 Regulations.

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

Date: 13 January 2022