



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit
Scheme (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/22/1053

Re: Property at 144 Eastwoodmains Road, Clarkston, G76 7HF (“the Property”)

Parties:

Mr Timothy Stacey, 6 Raeside Way, Newton Mearns, G77 6YL (“the Applicant”)

**Coromell Investments Ltd, Oakfield House, 378 Brandon Street, Motherwell,
ML1 1XA (“the Respondent”)**

Tribunal Members:

Jim Bauld (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that that the Respondent should be ordered to make payment to the Applicant of the sum of THOUSAND FIVE HUNDRED POUNDS (£2,500) payable in 12 monthly instalments, eleven of £208.33 each and one of £208.37

Background

1. By application dated 11 April 2022, the applicant sought an order in terms of Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”) in respect of an alleged failure by the respondent to comply with those regulations..
2. On 6 May 2022, the application was accepted by the Tribunal and referred for determination by the tribunal.

3. After sundry procedure, a Case Management Discussion (CMD) was set to take place on 3 February 2023 and appropriate intimation of that hearing was given to all parties

The Case Management Discussion

4. The Case Management Discussion (CMD) took place on 3 February 2023. The applicant attended personally. The respondent was represented by their Director, Alan Bruce. Also present was their employee Mrs Susie Cormack-Bruce and their letting agent Josh Hardy from HAP Lettings, Glasgow
5. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters. The tribunal asked various questions of the applicant with regard to the application.
6. The tribunal explained to the applicant the maximum award which could be made in terms of the 2011 Regulations
7. The tribunal indicated that it would be entitled to utilise the power within regulation 17 of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the tribunal rules") and that the tribunal could make a final decision at the case management discussion without remitting the matter to a further full hearing.

Agreed Findings in fact

8. A tenancy agreement was entered into between the parties which commenced on 17 August 2020
9. A deposit of £3,000 was taken on behalf of the respondent at the commencement of the tenancy
10. The deposit was not paid into an approved tenancy deposit scheme until 16 June 2021
11. The tenancy ended on 31 January 2022

Discussion at the CMD

12. It was noted that all parties agreed the findings in fact as undisputed and it was accepted that the tribunal was obliged to make an award in favour of the respondent. The only matter to be determined was the amount of the award
13. After some questions from the tribunal member to the parties, which were answered honestly and openly by all present, the applicant and the letting agent agreed to hold discussions to ascertain if agreement could be reached relating to the amount to be awarded
14. After this discussion, parties indicated that agreement had been reached and that an award should be made by the tribunal of £2,500 payable in twelve monthly instalments
15. Parties also agreed that this award would conclude all matters arising from the previous tenancy and that the letting agent would provide a neutral reference in respect of the applicants if such was requested by any future landlord

Decision

16. The failure to lodge the deposit constituted a clear failure to comply with the landlord's obligations in terms of the 2011 Regulations. This application related to the failure of the Respondent to place a tenancy deposit within an approved tenancy deposit scheme. Landlords have been required since the introduction of the 2011 Regulations to pay tenancy deposits into an approved scheme within 30 working days of the commencement of the tenancy.
17. In this case it was accepted by the Landlord (both orally at the CMD and in terms of the email from the letting agent dated 16 June 2021) that they had required to lodge the deposit but had failed to do so. Accordingly the landlord was in breach of the duties contained in Regulation 3 of the 2011 Regulations. Those duties are twofold. There is a requirement to pay the deposit to a scheme administrator and the requirement to provide a Tenant with specified information regarding the tenancy deposit. The Respondent failed in both duties.
18. Regulation 9 of the 2011 Regulations indicates that if a Landlord does not comply with any duty in regulation 3 then the Tribunal must order that a Landlord makes payment to the Tenant of an amount "not exceeding three times the amount of the tenancy deposit".
19. Accordingly in this case the Tribunal is required to make an order for payment. The only matter to be determined by the Tribunal is the amount of the payment. The tribunal noted the agreement reached by the parties and determined to make an award of £2,500 payable in monthly instalments. The agreed figure fell well within the range of awards available to the tribunal and the tribunal considered that the agreed figure was reasonable in all the circumstances

20. The tribunal also decided to exercise the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

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.

Legal Member/Chair

Date: 3 February 2023