Housing and Property Chamber
First-tier Tribunal for Scotland

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/19/3392

Re: Property at 43 Stewartfield Gardens, East Kilbride, Glasgow, G74 4GN ("the Property")

Parties:

Mr Allan Browne, 30 Dundas Court, East Kilbride, Glasgow, G74 4AN ("the Applicant")

Mr Raymond O'Mara, 14 Dunbeath Grove, West Craigs, Blantyre, Hamilton, G72 0GL ("the Respondent")

Tribunal Members:

Jan Todd (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent did not comply with the duty in Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 to pay the deposit to the scheme administrator of an approved scheme and ordered the Respondent to pay the Applicant the sum of one thousand three hundred and fifty pounds being two times the amount of the tenancy deposit.

BACKGROUND

1. This was the second Case Management Discussion to consider an application under Rule 103 for an order under Section 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011. (2011 Regulations).The First CMD was held on 23rd December 2019 where only the applicant was present and after the Tribunal heard from the applicant they were satisfied that a breach of the Section 9 and 10 of the Regulations had taken place and a fair and proportionate amount in the way of a penalty was £1350.
2. The Respondent who had not attended the CMD on 23rd December put in a request for a recall of the decision by e-mail dated 20th January 2020. He

attached an e-mail he had sent to the Tribunal on the morning of the hearing scheduled for 23rd December requesting the hearing be rescheduled. He said this was for reasons outwith his control but did not elaborate. The e-mail addresses used by him to request the postponement were incorrect future e-mails to the Tribunal were correctly sent.

3. After a request for further information by the Tribunal the Respondent advised he sought the recall because he had sought to postpone the hearing and he alleged the Applicant owed him arrears of rent. The Tribunal considered the application for recall and granted it by decision dated 2nd March 2020 principally because the postponement request had been sent but not received by the Tribunal and therefore not considered. The Tribunal ordered a further CMD to take place to allow the Respondent to attend.
4. Today's CMD was held by teleconference due to the current pandemic and requirement for social distancing. A letter detailing the Date and time of the CMD with the dial in procedures was sent to both the Applicant and the Respondent on 1st July 2020 by e-mail. The Tribunal was satisfied both parties had due notice of the CMD.
5. Neither lodged any written representations. The Applicant attended on the teleconference call. The Tribunal allowed an extra 10 minutes before commencing the call but the Respondent did not attend.

6. The following was lodged along with the application and has been considered by the Tribunal:-

- A copy of the Tenancy Agreement dated 24th April 2019
- Letter from Ascent Legal dated 14th August 2019 to the Applicant advising of a decree of repossession having been obtained from the Bank of Scotland and enclosing a Notice to Leave
- Note of Deposit paid

7. In addition the Tribunal had a copy of the original decision following the CMD on 23rd December resulting in an order for two times the deposit.
8. The Decision ordering the recall and various e-mails from the Respondent to the Tribunal requesting the recall due to failure to consider his request for a postponement.

The Discussion

9. As described above only the Applicant participated in the CMD through conference call. The legal member explained the purpose of the CMD and confirmed that the Tribunal can make any decision after a CMD as it can make after a hearing.
10. The Applicant confirmed that he had paid £675 to the Respondent in respect of the deposit and advised that he had checked with all three tenancy deposit companies and none of them held the deposit. He had no information regarding the tenancy deposit or where it should have been held. He confirmed that he had had to leave the tenancy at short notice due to being contacted by the Bank's solicitors. He further advised that when he originally opened a letter addressed to the occupier from the Bank's solicitor he contacted the Respondent as his landlord and the Respondent advised him it would be sorted out. Thereafter he received the

letter of 14th August from the Bank's solicitor advising him he required to leave. The Applicant advised he found it difficult to find another property at short notice and had to use letting agents to help him.

11. The Applicant is claiming a penalty for the failure to lodge the deposit and for not providing any information as required by the 2011 Regulations. In his application he is seeking the maximum. He was perplexed as to why the recall of the original order was allowed and the Legal Member reminded him of the reasons stated in the Decision allowing the recall.
12. There were no representations from the Respondent and even in the e-mails from the Respondent to the Tribunal office on or around 26th February 2020 asking for a recall there was no explanation or comment regarding the failure to the lodge the deposit in a scheme. The only comment the Respondent has made in his e-mail of 26th February is "my stance on the matter is that the Tenants were due to pay rent of £575 on 29th August payment of which has never been received. My position is and always has been that I am more than happy to refund the tenant's deposit less rent due (calculated on a pro rata basis) plus commercial interest on this debt at 8% until such time as the debt is paid."

FACTS

1. The Respondent entered into a lease with the Applicant and another party whereby the Applicant leased the Property from the Respondent from 29th April 2019
2. The rent due was £575 per month.
3. The deposit paid by the Applicant to the Respondent was £675.
4. The tenancy continued from 29th April 2019 until September 2019 when the Applicant left having been served notice to leave by the Respondent's lenders who had obtained an order for repossession.
5. The Applicant was not at any time given information about where his deposit had been placed.
6. The Applicant raised an application for payment of an order under Rule 9 of the Regulations on 23rd October 2019 .
7. The Deposit was not placed in an approved scheme.
8. No part of the Deposit has been returned to the Applicant. It is noted the Respondent in e-mails to the Tribunal has alleged the Applicant owes some rent arrears but notes that it would not amount to the full amount of the deposit.

REASONS

- The Tribunal found that the Respondent has failed to comply with the duty set out in Section 3 of the 2011 Regulations by failing to place the deposit in an approved scheme within 30 days of the beginning of the tenancy.
- That in terms of Section 10 of the 2011 Regulations the Tribunal is obliged to make an order that the landlord pay the tenant an amount not exceeding three times the amount of the tenancy deposit.

- The Tribunal considered that as there were no representations to dispute the facts as set out by the Applicant and in accordance with the overriding objective to avoid delay, it was appropriate to make an order at the CMD.
- The Tribunal found the Applicant credible in his submissions and supported by the documentation he has lodged.
- The Respondent has not provided any mitigating factors as to why the deposit was not lodged in an authorised scheme.
- All landlords should know that all deposits require to be lodged in an authorised scheme. The Regulations have been in force since 2011
- The Tenant is entitled to know that his deposit is protected and that at the end of the tenancy if there is any dispute he can avail himself of the independent dispute adjudication service offered by the statutory deposit schemes. The Applicant was deprived of this.
- The Tribunal noted that the Respondent has not returned the deposit. The purpose of lodging a deposit in an approved scheme is to allow both parties the protection of having any dispute over the return of the deposit adjudicated by the scheme administrators who act in an objective way. The tenant has been deprived of this facility although it is noted there may be a dispute over the return of the deposit.
- The Tribunal notes that the tenancy did not last very long however the Applicant was put at a disadvantage over not easily having a deposit to apply to a new tenancy being required to leave early due to the repossession of the Property by the Respondent's lender.
- The award is a penalty for breach of the Regulations and the Tribunal has to consider what level of penalty is appropriate.
- The lease did not last for more than a few months but this was due to a repossession order obtained by the Respondent's lender in or around July 2019.The Applicant was deprived of an adjudication of his deposit which has not been repaid, the Respondent did not provide any information to the Applicant regarding the tenancy deposit scheme and has not attended either CMD or provided any written representations regarding the lodging of the deposit that the Tribunal could consider. Weighing up all the factors as set out above, the Tribunal considers the amount of two times the deposit as reasonable and appropriate.

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.

Date: 21st July 2020
Legal Member/Chair: Jan Todd