



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

Chamber Ref: FTS/HPC/PR/18/2522

Re: Property at 25F Powis Crescent, Aberdeen, AB24 3YY ("the Property")

Parties:

Mr Flavio Spadavecchia, 53C Bedford Avenue, Aberdeen, AB24 3YL ("the Applicant")

Mrs Zulia Chowdhury, 150 South Anderson Drive, Aberdeen, AB10 7PU ("the Respondent")

Tribunal Members:

Martin McAllister (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent had failed to comply with the terms of The Tenancy Deposit Schemes (Scotland) Regulations 2011 and had failed to pay a tenancy deposit to a tenancy deposit scheme. The Tribunal ordered the Landlord to pay the sum of £100 to the Applicant.

Background

This is an application by Mr Flavio Spadavecchia to the Tribunal dated 17th September 2018. It is in respect of the tenancy of a property at 25F Powis Crescent, Aberdeen. The application alleges that the Respondent received a deposit in respect of the tenancy and failed to pay it to an approved tenancy deposit scheme in terms of regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (the 2011 Regulations).

The Applicant lodged various documents in support of his application and the Respondent lodged written representations dated 9th November 2018.

The Hearing

The Applicant was present and gave evidence.

The Respondent was present and was accompanied by her husband Mr Mohammed Hossan. Both gave evidence.

Preliminary Matters

The Respondent said that the application to the Tribunal was out of time because the tenancy had ended sooner than the date stated in the tenancy agreement which was 20th June 2018. The Applicant said that the rent was paid for June and this was not disputed by the Respondent.

The Tribunal determined that the application was timeous.

Findings in Fact

1. The Applicant resided at 25F Powis Crescent, Aberdeen and was a tenant in respect of a tenancy agreement dated 10th August 2018.
2. The Tenancy ended on 20th June 2018.
3. The Applicant was a tenant along with five other individuals.
4. The Landlord received a deposit in respect of the tenancy.
5. The Landlord did not pay the deposit to a tenant deposit scheme.
6. After the Tenancy had ended, the Landlord paid funds to the Applicant in respect of the deposit after certain sums had been deducted.

Evidence

Parties agreed that the Applicant resided in the Property and that he had paid rent to the Respondent.

The Respondent accepted that she had received a deposit and had not paid it to a tenant deposit scheme.

The tenancy agreement was dated 8th August 2018 and had six individuals as tenants. One of these individuals was the Applicant and another was Clelia Liardo who was the only tenant to have signed the document. The document stated that three parties would stay in the Property until 31st December 2018 and that three others would stay in the Property from 1st January until the end of the tenancy. In her written representations the respondent referred to a licence agreement but accepted that no such document had been signed and that the only contractual document was the one before the Tribunal which had been signed by Mr Hossan as agent of the Respondent.

The Applicant said that he thought he had signed a document but could not find it. The Respondent said that the lease had been prepared in the way it was because Miss Liardo wanted it done that way. Mr Hossan said that he did not pay the deposit into a deposit scheme because he was not sure who the tenants actually would be because Miss Liardo said that there was uncertainty about two of the parties named in the document were uncertain. Mr Spadavecchia said that this was not the case and that, at the time the document was signed the identity of the six parties was known.

The tenancy agreement stated that the deposit was £400 with £720 being an advance rental. The Applicant disagreed with this and said that the deposit was £1120. He said that each individual occupying the property had paid £180. The respondent did not accept this but Mr Mohammed said that a mistake had been made in the tenancy agreement and that the deposit was not £400 as stated there. Mr Spadavecchia explained the arrangements which the six occupiers of the property had amongst themselves and which seemed to involve various offsets of funds between the rent and the deposit. It also seemed to involve arrangements agreed between the occupiers of the property until 31st December 2017 and the occupiers until the end of the tenancy.

Parties were agreed that £350 was paid to the Applicant by the Respondent on 17th September 2018. A copy of a bank statement lodged by the Applicant confirmed this and the entry read "Mohammed Hossan return of deposit." Mr Hossan said that he did this only after Miss Liardo had authorised him to do so.

The Respondent in her written representations said that the other occupiers of the property did not want to raise any issues about the deposit and Mr Hossan confirmed this in his oral evidence.

The Applicant said that he had attempted to contact Mr Hossan on a number of occasions and that he felt he had been avoiding him and not responding to his calls. He said that he had not been treated fairly.

Mr Hossan apologised to Mr Spadavecchia .

Reasons for Decision

The matter was focussed and parties were content to have it resolved without a Hearing.

On one view there were defects with the tenancy agreement. It was only signed by one of the six parties but the Respondent had accepted payment of rent from the Applicant and had returned a sum to him in respect of the deposit.

Parties were not in agreement with regard to what the deposit was and the Tribunal did not come to a determination on this. It did not consider it required to do so in view of the sum it considered reasonable for the Respondent to pay to the Applicant in respect of her breach of the 2011 Regulations.

It did accept that the arrangements between the six occupiers and the Landlord were unusual but considered that it was entitled to rely on the terms of the tenancy agreement before it and the fact that both parties accepted that a deposit had been

paid, that the Applicant had occupied the property and that a sum in respect of a deposit had been returned to him. The Respondent accepted that the deposit had not been paid to an approved tenancy deposit scheme.

The Applicant had the deposit returned to him albeit after some deductions. The 2011 Regulations obliged a landlord to pay any deposit to an approved tenancy deposit scheme. In this case the Respondent had not done this.

Having found that the Respondent has not complied with regulation 3 of the 2011 Regulations the Tribunal was obliged to make an order under regulation 10 of the 2011 Regulations. In all the circumstances the Tribunal consider the sum of £100 to be reasonable.

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.

Martin McAllister

Martin J. McAllister
Legal Member/Chair

14th November 2018