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 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/18/1726

Re: Property at Flat 4 Teviodale House, 14 Parsonage Square, Glasgow, G4 0TA ("the Property")

Parties:

Mr Tiago Goncalves, Mrs Barbara Goncalves, 27 Hill Street, Hamilton, ML3 9LY ("the Applicants")

Mr Rishi Kalanke, Mrs Komal Kalanke, 7 Draper Crescent, Wokingham, RG40 1GW ("the Respondents")

Tribunal Members:

Lesley Ward (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") being satisfied that the Respondents as landlord of the property at Flat 4 Teviodale House 14 Parsonage Square Glasgow G4 0TA, did not comply with any duty in Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011, makes an order for the Respondents to pay to the Applicants the sum of nine hundred pounds(£900).

This was the second case management discussion 'CMD' in connection with this application in terms of rule 103 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 'the rules' for an order for payment where a landlord has not paid the deposit into an approved scheme in terms of Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, "the regulations". A first CMD took place on 8 February 2019. There was a preliminary issue regarding whether the application was a timeous one on that date. The issue was whether the application

LW

was made within 3 months of the tenancy coming to an end in terms of regulation 9(2).

The tribunal noted that the application was dated 28 June 2018 but was not stamped as being received by the Tribunal administration until 9 July 2018. It was a matter of agreement that the tenancy came to an end on 6 April 2018. The terms of regulation 9 provides that an application "must be made no later than 3 months after the tenancy has ended". The means that any application in terms of rule 10-3 would require to be made by 6 July 2018. The tribunal's view is that the application is not 'made' until it is received by the tribunal, irrespective of when it is dated. It appeared to the tribunal that the application before it today is therefore time barred. Indeed the respondent Mr Kalanke also made this point in his written representations dated 4 February 2018.

The applicants disputed that the application was time bared. They stated that they sent the application to the tribunal via track and trace before the 6 July 2018. The tribunal adjourned for a short time for them to check the position and produce evidence that the application was made before ie received by the tribunal before the 6 July 2018. When the tribunal reconvened they produced a copy of an email which they stated they sent to the tribunal with the application as attachments to it. They stated that they sent 2 emails, one on the 30 June 2018 and another on 5 July 2018. They stated that they got no reply to the emails. They sought time to produce copies of the emails and the track and trace documentation.

The tribunal adjourned consideration of the case management discussion until 25 March 2019 at 10 am within the Glasgow Tribunal Centre. The tribunal made the following directions in terms of rule 16 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulation's 2017, 'the rules':

The Applicant is required to provide:

1. A copy of any track and trace documentation which shows or tends to show that the applicants sent a 'signed for' letter to the Tribunal sometime between 28 June 2018 and 5 July 2018 and which shows or tends to show the Tribunal received a letter from the applicants on or before 6 July 2018.

2. A copy of any email sent by the applicants to the Tribunal on 30 June 2018 and copies of any attachments to any email sent.

3. The said documentation should be lodged with the Chamber no later than close of business on 22 February 2019.

4. The tribunal also directs that the adjourned case management discussion fixed for 25 March 2019 at 10 am shall take place with the respondents

LW

attending via conference call. The Tribunal administration shall make the necessary arrangements.

5. The same tribunal legal member shall attend the adjourned case management discussion, if available.

Since the CMD on 8 February 2019 various documents have been lodged by both parties. The applicants sent in an email to the tribunal on 14 February 2019 containing a copy of an email addressed to the tribunal dated 30 June 2018 with the rule 103 application and all supporting documents.

The respondent also wrote in to the tribunal on 7 March 2019 with three sets of documents, namely: photographs of alleged damage to the property; a letter from a previous tenant ; and ; council tax bills relating to the property.

A further communication was received by the applicants dated 20 March 2019 setting out the applicants' response to the various matters raised by the respondents.

Both parties attended the CMD via conference call.

In addition to the above noted documents the Tribunal had before it the following copy documents:-

1. Application dated 28 June 2018.
2. Tenancy agreement dated 1 December 2017 for the rental period 18 January 2018 until 18 January 2019.
3. Exchange of emails between the applicant and respondent dated 25, 26 October 2017.
4. Copy bank statement of applicants.
5. Email from respondent dated 4 February 2019 with enclosures including bank statements and print out from deposit scheme.
6. Letter sent to applicants by Glasgow City Council dated 6 March 2018.

Preliminary matter

The tribunal noted that the email sent in by the applicants in compliance with the direction 2 above appears to show that the applicants made the application timeously. The applicants stated that they were unable to find the track and trace documentation. The tribunal had made its's own inquiries and the case workers were unable to locate the email the applicants say they sent in on 30 June 2018. The tribunal invited both parties to make submissions regarding whether the application had been made timeously. The respondents position was that the if the tribunal are unable to confirm it was received on 30 June 2018 the tribunal today should not accept that either. The tribunal noted that the tenancy came to an end on 6 April

LW

2018 and the application would therefore require to be made by 6 July 2018. It was not stamped until 9 July 2018. The tribunal decided on the balance of probability that, given the applicants had produced a copy of the email they say the sent on 30 June 2018, in accordance with the overriding objective the tribunal considered that it is a valid application.

Case management discussion

Having resolved the preliminary matter, the tribunal then went on to consider the merits of the application. It was agreed that a breach had taken place. The respondent set out their position in some detail in their email received on 4 February 2019 regarding what they considered to be mitigating factors. The tribunal noted that the documents lodged by the respondents since the last CMD appeared to relate to complaints the respondents had with the tenants conduct. The tribunal decided that these documents were not relevant the decision to be made today, other than perhaps to underline the importance of a deposit being placed in a scheme.

The first respondents gave detailed evidence regarding the letter which the tenants had been sent from the council. It appeared that the first named respondent had failed to register as landlords and the council had issued a rent penalty notice. The first named respondent's position was that this was an oversight and that what should have been a renewal was treated as a fresh application. He stated that the matter was resolved after the applicants' brought the matter to his attention. He stated that he was a registered landlord and the council refunded the penalty that they sent him. He made reference to copy documentation he lodged but other than the letter refereed to at 6 above the tribunal did not have any other documentation in this regard. He stared that the applicants' failure to bring this matter to his attention for 2 weeks was the 'final straw' and he wanted to bring the tenancy to an end. He stated that this was done by mutual agreement. It was agreed that the deposit was returned in full. The second applicant's evidence was that the sum of £20 was initially withheld by the first respondent and after they sent him an email it was also returned. The first respondent's position was that parties had initially agreed to withhold the £20.

Findings in fact

1. The tribunal is satisfied that the applicants made a timeous application to the tribunal on 30 June 2018 in terms of the regulations.

2. The tribunal is satisfied that the applicants paid a deposit of £600 to the respondents in November 2017.

3. The tribunal is satisfied that the applicants rented the property from the respondents from January 2018 until 6 April 2018.

LW

4. The tribunal is satisfied that the deposit was not paid in to a recognised deposit scheme and the landlord did not provide details of the scheme or a statement that he is or has applied to be entered in the register of landlords maintained by the local authority, as required by Regulation 42 of the regulations.

Reasons

The tribunal was satisfied that a breach of Regulation 3 has occurred and that an order is appropriate in terms of Regulation 10. The tribunal considered the terms of the regulations. Regulation 3 provides:-

A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 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.

The tribunal reviewed all of the recent cases regarding tenancy deposit schemes and noted that in the case of Kirk-v-Singh sheriff Jamieson states

The defender, a registered landlord, acted through his agent. Although that ignorance is no excuse, it is a factor to be taken into account in the exercise of my discretion.

Sheriff Jamieson in Singh was mindful of the need to:-

proceed to impose a sanction which is "fair , proportionate and just having regard to the seriousness of the noncompliance.

The tribunal, having heard all of the available evidence and taking into account the representations made for the respondent is satisfied that the respondent failed to comply with all of his obligations in terms of Regulation 3.

The tribunal noted in mitigation that the respondents' has omitted to lodge the deposit due to the time which had elapsed between the deposit being made and the commencement of the tenancy. The tribunal also noted that the full deposit was returned. The tribunal also noted that the balance of £20 which the respondents retained was also returned. The tribunal took into account that the first respondent is an experienced landlord with 6 properties. He should therefore have been aware of his obligations and given the allegations the respondents have made regarding the conduct of the applicants, it would have been prudent to lodge the deposit in a scheme for the respondents' own protection. The first respondent should also have been more careful in his dealings with the landlord registration scheme and it is curious that the first respondent has made the point that the applicants had some duty to notify him of the letter from the council regarding the rent penalty notice.

LW

Taking all of that into account the tribunal decided that a sanction of £900 representing one and a half times the deposit is fair just and reasonable in all of the circumstances.

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.

Lesley Ward

17 April 2019.

Date