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/CV/18/0129

Re: Property at Palacecraig House, Airdrie, ML6 9RG ("the Property")

Parties:

Jacqueline Hyslop, 34 West Drive, Airdrie, ML6 8BL ("the Applicant")

David Haveron and Catherine Haveron, Palacecraig House, Airdrie, ML6 9RG ("the First and Second Respondents")

Tribunal Members:

Melanie Barbour (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that

Background

An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the 2017 Rules") seeking an order for payment of the deposit in relation to an assured tenancy for the Property.

The application contained a copy of the Tenancy Agreement. The Applicant advised that the Respondent had failed to submit the deposit of £400 to an approved scheme; and the deposit had not been returned to her, although she had left the Property on 15 December 2017.

The Applicant attended the case management discussion. There was no appearance from either Respondent.

Notice of today's hearing had been sent by recorded delivery mail to the Respondents, and appeared to have been received by them on 23 July 2018.

This was a continued case management discussion, the previous one being scheduled for 4 June 2018. The previous hearing had been postponed however as the Respondents had called that morning to advise that Second Respondents was unwell and could no longer attend. Written representations dated 9 and 21 May 2018 had been received from the Respondents prior to that hearing.

I was satisfied that the Respondents were aware of the today's hearing and accordingly, I was prepared to proceed with the matter today in their absence.

The Hearing

The Applicant advised that she had moved into the Property in July 2016, she had left a previous rented property, she had obtained her deposit from her previous rented property and paid it to the Respondent as her deposit for the Property. She was not provided with a receipt and had been asked to make payment in cash.

The Applicant advised that thereafter she did not receive any correspondence from the Respondents or any approved scheme to advise that her deposit had been lodged.

She advised that initially the First Respondent had told her that she should contact him regarding matters to do with the tenancy, however he subsequently advised her to speak to Second Respondent about tenancy matters, as he lived in London and the Second Respondent lived next to the Applicant.

In around November or December 2017, she was asked to leave the Property. She advised the one of the First Respondent's friend came to the property and handed her a letter asking for to leave the Property. She managed to find another property to rent, and she therefore left the Property on 15 December 2018.

She advised that tried to speak to the Second Respondent about the return of her deposit but the Second Respondent would not speak to her. She advised that the Second Respondent had refused to speak to her about anything for a number of months before she left the property, and it was a very difficult situation.

The Applicant advised that when she left the Property she contacted one of the approved schemes, My Scotland Deposit, however they had no record of any deposit being paid for the Property.

She then made an application to the Tribunal on 12 January 2018.

The Applicant advised that she believed that the Respondents had been renting out two flats at Palacecraig House for around 20 years. She believed that the First Respondent worked in London and was involved in financial markets, and she understood that the Second Respondent was retired but previously worked in banking.

There was also before me an email of 9 May 2018 from the First Respondent offering to pay the £400 deposit and asking how this money could be paid; and a letter from the First Respondent counterclaiming against the Applicant for unpaid rent.

I drew the Applicant's attention to the letter dated 21 May 2018 which had been sent from the First Respondent, counterclaiming for outstanding rent. The Applicant disputed the terms of the letter and advised that she did not consider she owed rent.

Findings in Fact

On the information before the Tribunal I found the following facts to be established:

A tenancy agreement was entered into between the Applicant and the Respondents for the property and existed between the parties. It was entered into on 6 July 2016.

The Tenancy had ended.

It appeared that it had ended no earlier than 15 December 2017.

The application to the tribunal had been made on 12 January 2018.

There is a clause in the lease agreement entitled "Deposit" which confirms that one month's rent of £400 is payable as a deposit, and that this sum will be returned to the Tenant at the end of lease as long as all Terms and Conditions of this contract are adhered to.

That the deposit had been paid by the Applicant to the Respondents.

That the deposit had not been paid into an approved scheme.

The Respondents had not repaid the deposit belonging to the Applicant.

Reasons for Decision

The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits by landlords for tenants, and relevant to this case are the following regulations:-

Duties in relation to tenancy deposits

3.—(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—
(a) pay the deposit to the scheme administrator of an approved scheme; and
(b) provide the tenant with the information required under regulation 42.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A "relevant tenancy" for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement— (a) in respect of which the landlord is a relevant person; and (b) by virtue of which a house is occupied by an unconnected person, unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions "relevant person" and "unconnected person" have the meanings conferred by section 83(8) of the 2004 Act.

Court orders

9.—(1) A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(b) may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to— (i) pay the tenancy deposit to an approved scheme; or (ii) provide the tenant with the information required under regulation 42.

The Respondents did not appear at today's hearing. Other than what was contained in their correspondence of 9 and 21 May 2018, I do not know what their position on this application is.

As an initial issue, I would advise that I do not make any determination on the matter which the Respondents sought to raise, namely the counterclaim, given that they were not here today to progress with that claim. I would note in passing that the Applicant indicated that she disputes that she owes rent arrears for the Property. I consider that if the Respondents wish to do so they are not prevented from raising this as a separate action at a future date.

I have therefore decided on the basis of the information before me that the Applicant paid the deposit, that it was not paid into an approved scheme and it was not subsequently returned to her. This is in contravention of regulation 3.

Form the information presented by the Applicant it also appears that she was unable to discuss the issue of the deposit with the Second Respondent at the end of her tenancy. It also appears that at the end of the tenancy there was no discussion by the Respondents with the Applicant about any reason why the deposit would not be returned, and there is no indication that there would ever have been any contact about the deposit had the Applicant not made an application to the Tribunal.

From what the Applicant advised, while the Respondents were not large scale professional landlords, they had nonetheless being acting as landlords for a number of years and I consider that they should have therefore been aware of the Tenancy Deposit Scheme.

Their failure to put the deposit into an approved scheme at any time, has prejudiced the Applicant through the entire duration of her tenancy, and thereafter, as she has been prevented from pursuing the appropriate avenue in which to have her deposit returned to her, and in the event of any dispute, she has not been able to have the dispute adjudicated upon.

The Applicant at the outset advised that she had needed to use her previous deposit to pay for the deposit for the Property, and I think it is reasonable to assume that, the certainty of knowing if she was able to get her deposit back, how much of it and when it would be returned, would be important to her.

The Applicant describes a situation where the Second Respondent, would not even speak to her for the last few months of her tenancy, and at the end of it, I consider it all the more important then, that her deposit money should have been held in a scheme which would provide an impartial service in which she could have accessed.

I have no idea why the Respondents did not pay the deposit into an approved scheme, or whether they now understand the requirement to do so. It would appear that they have taken a "light touch" approach to ensuring that they comply with these regulations, which is of concern.

I do not consider the Respondents actions in these matters to be reasonable.

From what the Applicant said, it appears that the Respondents are not a professional organisation who deal with these types of matters on a daily basis, however if they have been acting as landlords for a number of years renting out two properties, I do consider that they should have been well aware of their duties in this matter.

Taking all matters into account, I think there was a flagrant disregard for the provisions of the regulations. I do consider that the Applicant was prejudiced by this conduct. I think that this prejudice has been on-going.

As set out above Regulation 10 provides that if I am satisfied that the landlord did not comply with any duty in regulation 3, then I must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.

I think that attitude of the Respondents towards their duties and the impact that this has had on the Applicant leads me to find that this is a sufficiently serious case and an award of a sum equivalent to two times the deposit itself, namely £800 would be reasonable in all the circumstances.

In this case I have also decided to make an order under regulation 10 (b) (i) and order the landlord to— (i) pay the tenancy deposit to an approved scheme.

I have decided to make this order, as I am aware that the Respondents have not repaid the deposit to the Applicant. The Respondents have also indicated that they consider there is outstanding rent due by the Applicant, if that is indeed the case, then that matter can be adjudicated through an approved scheme. It will ensure that both parties have an opportunity to present their case and have an impartial determination on this matter.

On the basis of the evidence submitted, I consider that I should make an order the landlord to pay the tenant £800.00; and the landlord pay the tenancy deposit of £400 to an approved scheme.

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.

Melanie Barbour

22. 8. 18

Legal Member/Chair **Date**