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 Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Procedure Regulations") and The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations")

Chamber Ref: FTS/HPC/PR/23/2868

Re: Property at 7/6 Gillespie Crescent, Bruntsfield, Edinburgh, EH10 4HT ("the Property")

Parties:

Mr Matthew Collings, Miss Eilidh Phillips, Mr Gregory Bligh Caplan, Miss Faye Dowse, 64 Dover Park, Dunfermline, Fife, KY11 8HU; 20 Burghlee Terrace, Loanhead, Midlothian, EH20 9BW; 1 Castle Terrace, New Road, Lewes, East Sussex, BN7 1YZ; 23 Dalmorton Road, New Brighton, Wallasey, Merseyside, CH45 1LE ("the Applicant")

Ms Javeria Bashir, 4 Claremont Court, Edinburgh, EH7 4LA ("the Respondent")

Tribunal Members:

Nicola Weir (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment by the Respondent in the sum of £5,000 should be made in favour of the Applicant.

Background

1. By application received on 21 August 2023, the Applicant sought a payment order against the Respondent in respect of failure to carry out her duties as landlord in relation to a tenancy deposit. The failures alleged were a failure to lodge the deposit with an approved scheme and also a failure to provide the requisite information to the Applicant. Supporting documentation was submitted with the application, including a copy of the tenancy agreement, proof that the deposit had been paid to the Respondent at the outset of the tenancy, proof of the tenancy end date, some communications between the parties at various

stages throughout the tenancy, confirmation from the three statutory approved tenancy deposit schemes that neither of them held the tenancy deposit in respect of this tenancy and a copy of a previous Tribunal Decision against the same Respondent in which she was found to have breached the 2011 Regulations in respect of another property.

2. The application was subsequently accepted by a Legal Member of the Tribunal acting with delegated powers from the Chamber President who issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations on 24 August 2023. Notification of the application was then made to the Respondent and the date, time and arrangements for a Case Management Discussion ("CMD") were intimated to the parties, advising of the date by which any written representations should be lodged by the Respondent. Said notification was served on the Respondent by Sheriff Officer on 26 September 2023. No representations were lodged by the Respondent prior to the CMD.

3. A separate application had also been made by the Applicant against the Respondent in terms of Rule 111 of the Regulations requesting return of the tenancy deposit of £2,500 (Chamber Reference FTS/HPC/CV/23/2869) and was being dealt with together with this application.

Case Management Discussion

1. A Case Management Discussion ("CMD") took place by telephone conference call on 30 October 2023 at 2pm, attended by three of the Applicants, Mr Matthew Collings, Ms Eilidh Phillips and Mr Gregory Bligh Caplan who agreed that Mr Collings would be their spokesperson. The fourth Applicant, Miss Faye Dowse, was abroad and could not dial in on an international number but was available via messaging with the other Applicants if any information was required from her. The Legal Member delayed the start of the CMD for almost 10 minutes to allow an opportunity for the Respondent to join late but she did not do so.

2. After introductions and introductory remarks by the Legal Member, Mr Collings was asked to summarise the application. He confirmed that the Applicants are seeking a payment order against the Respondent, their former landlord, as she failed to place their tenancy deposit of £2,500 into a tenancy deposit scheme and, as a consequence, they have not been able to get the deposit back after the tenancy ended. Reference was made to the supporting documentation submitted with the application and it was noted that there was a tenancy agreement between the parties in respect of the Property which commenced on 14 September 2022 and ended on 30 June 2023, after the Applicants gave notice. It was noted that the tenancy agreement makes reference at Clause 11 to the tenancy deposit being £2,500 and that it would be deposited with Safe Deposits Scotland. Reference was made to screenshots showing a bank transfer from Mr Collings, the lead Applicant to the Respondent in that sum on 20 September 2022. The Legal Member also noted that the Respondent had reiterated in an email to the Applicant on that date that the deposit would be placed in a scheme. Mr Collings explained that the deposit was paid slightly

after the start of the tenancy with the Respondent's agreement. The four Applicants were joint tenants and the other three had arranged to pay their shares of the deposit to Mr Collings who had then transferred to whole amount to the Respondent. Mr Collings explained that the Applicants were students and they had had difficulty finding a flat in Edinburgh. Mr Collings had put an advert on Gumtree seeking accommodation and the Respondent made direct contact with him and offered him this Property. She explicitly stated that it was not in great condition. Mr Collings referred to the photographs he had submitted to the Tribunal as evidence of the condition of the Property when they all vacated. He indicated that he had also taken a video of same with the assistance of his father and that this could be produced to the Tribunal if necessary. Mr Collings also stated that the rent was paid throughout the tenancy and referred to the proof of payments of rent submitted with the application, together with various communications between himself and the Respondent. The Applicant's position is that there was therefore no justification for the Respondent to retain the tenancy deposit, either to cover rent arrears or to do with the condition of the Property when they vacated. Mr Collings advised, however, that despite him requesting the deposit back and messaging the Respondent repeatedly about this, the deposit was not returned and nor did the Respondent clarify the position as regards whether the deposit was ever placed in a tenancy deposit scheme. Mr Collings referred to the screenshots lodged of messages between himself and the Respondent which the Legal Member noted spanned the period 16 July to 1 August 2023. Mr Collings confirmed that the Respondent did not carry out any end of tenancy inspection before they vacated and there were no further messages from her, either regarding the return of the deposit nor providing further information regarding the deductions she stated she was proposing to make from the deposit. Mr Collings stated that he had told the Respondent that any deductions she proposed to make from the deposit had to be fair and that this was the very reason that the deposit should be protected in a scheme. He informed her before submitting the application to the Tribunal that he had taken advice and that this was what he was intending to do but she did not seem bothered. Mr Collings confirmed that he has not heard from the Respondent since the application was submitted to the Tribunal.

3. The Legal Member indicated that she was satisfied from the documentation submitted and what she had heard today at the CMD that there had been a breach of the 2011 Regulations by the Respondent as the deposit had not been placed in one of the approved schemes, either within 30 days of the commencement of the tenancy nor indeed since then. In addition, the Respondent had issued erroneous information to the Applicant regarding the placing of the deposit within a scheme at the outset of the tenancy.

4. The Legal Member explained the Tribunal's duties and powers in terms of a breach of the 2011 Regulations and that the maximum penalty which could be imposed was an amount of three times the tenancy deposit, in this case £7,500. Mr Collings was invited to make representations on the amount of penalty considered appropriate by the Applicant. Mr Collings referred again to the difficulties and financial pressures on the Applicant as students seeking to secure accommodation in Edinburgh and that they consider that the Respondent took advantage of them. It has caused them financial difficulties in

not being able to secure return of their deposit of £2,500 following the end of this tenancy and meant that they did not then have this money available for further tenancy and other costs payable at the start of the next academic year, which has already begun. Mr Collings referred to the legal protections afforded to tenants when their deposits were properly protected in a scheme and the difficulties which arose for them here due to the Respondent having failed in her legal responsibilities. If the deposit had been placed in a scheme, any dispute over deductions the Respondent wished to make from the deposit would have been dealt with fairly through the scheme and they would have had their money back well before now. Mr Collings referred to the previous Tribunal Decision he had lodged which showed that the Respondent had previously been found to be in breach of the 2011 Regulations in 2019 and had been ordered to pay a sum of money to the tenants in that case as a consequence. She is therefore fully aware of her legal responsibilities and has no excuse for doing the same thing again. Mr Collings stated that the Respondent indicated to them that she had been a landlord for many years, so is thought to be an experienced landlord. The Applicant thinks that she has at least two or three properties that she lets out, including this one and the one which was the subject of the previous Tribunal Decision, also in Edinbugh. The Applicant spoke to some neighbours at the Property and was told that this Property had been empty for a period before the Applicant occupied it. Mr Collings has gone past the Property recently and noticed lights on, so thinks it is probably occupied again currently. In the circumstances, Mr Collings considers that the maximum penalty would be appropriate here, particularly as the there has been a previous breach by the Respondent.

5. The Legal Member indicated that a payment order would be made in favour of the Applicant today. She indicated that it was likely to be towards the higher end of the scale, given the circumstances, but that she would fully consider the matter and issue a written decision shortly, specifying the amount of the payment order and explaining the reasons for same. There was some further discussion regarding the procedure which would follow and the Applicant was advised that they would require to take their own advice on enforcement of any order against the Respondent in due course.

Findings in Fact

1. The Respondent is the owner and landlord of the Property.

2. The Applicant is the former joint tenant of the Property by virtue of a Private Residential Tenancy which commenced on 14 September 2022.

3. The tenancy ended and the Applicant vacated the Property on or around 30 June 2023.

4. The tenancy deposit was £2,500 and was paid to the Respondent on or around 20 September 2022.

5. At the end of the tenancy, the Applicant requested return of the deposit.

6. The Respondent has failed to return the deposit to the Applicant and has offered no explanation for her failure to do so.

7. The Respondent has failed to pay the deposit of £2,500 into a tenancy deposit scheme, in breach of her obligations in terms of the 2011 Regulations.

8. The Respondent also failed to comply with her duties to provide the Applicant with the requisite information in respect of the tenancy deposit in terms of the 2011 Regulations.

9. The Respondent has not submitted any written representations, nor attended the CMD.

Reasons for Decision

1. The application was in order and had been submitted timeously to the Tribunal in terms of Regulation 9(2) of the 2011 Regulations [as amended to bring these matters within the jurisdiction of the Tribunal], the relevant sections of which are as follows:-

*"**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."

Regulation 3 [duties] referred to above, is as follows:-

*"**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."

Regulation 42 [landlord's duty to provide information to tenant] referred to above, is as follows:-

***"42.**—(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).*

(2) The information is—

(a)confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;

(b)the date on which the tenancy deposit was paid to the scheme administrator;

(c)the address of the property to which the tenancy deposit relates;

(d)a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;

(e)the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and

(f)the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.

(3) The information in paragraph (2) must be provided—

(a)where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or

(b)in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme."

The Legal Member was satisfied from the documentation before her and the oral representations from the Respondent at the CMD that the Respondent was under the duties outlined in Regulation 3 above and had failed to place the deposit of £2,500 paid by the Applicant into an approved tenancy deposit scheme and to provide the Applicant with requisite information in respect of same, contrary to Regulations 3 and 42 of the 2011 Regulations. The Respondent did not submit any written representations or attend the CMD. The Legal Member accordingly had no information before her to contradict the position put forward by the Applicant. The Legal Member was therefore satisfied that the application did not require to be continued to an Evidential Hearing and that, in terms of Regulation 10 above that a sanction must be imposed on the Respondent in respect of this breach of the 2011 Regulations.

2. In determining the appropriate amount of the sanction to be imposed on the Respondent for payment to the Applicant, the Legal Member considered carefully the background circumstances and the information presented by the Applicant on the matter. As the Respondent had not engaged in the Tribunal process, the Legal Member was unaware of any explanation for the Respondent's breach of the 2011 Regulations nor mitigating factors that should be taken into account in considering the appropriate level of sanction. The Legal Member considered that the amount of the sanction should reflect the gravity of the breach. The Applicant was of the view that the maximum sanction was appropriate. As the deposit here was £2,500, in terms of Regulation 10(a) above, the maximum possible sanction is £7,500. There is no minimum sanction stipulated in the 2011 Regulations.
3. The Legal Member considered the length of the tenancy of 9.5 months and the fact that for the duration of the tenancy, the deposit had been unprotected. It was an important factor, in the Legal Member's view, that the Applicant was unaware of this throughout, having trusted that the Respondent would place the deposit in an approved scheme, given that the particular scheme was named in the tenancy agreement and also, that the Respondent had separately informed the Applicant that the deposit would be paid into the scheme on receipt. The Respondent therefore provided misleading information to the Applicant regarding the deposit and scheme, itself a breach of the 2011 Regulations. The Legal Member considered that the Respondent had compounded matters by essentially refusing to confirm the position regarding the tenancy deposit at the end of the tenancy and failed to return the deposit to the Applicant, despite several requests to do so. The Respondent had indicated that she intended to make some deductions from the deposit to do with the condition of the Property but, on being asked to provide further details or vouching for this, she failed to do so. By failing to place the deposit in a scheme at any point, the Respondent had denied the Applicant access to the dispute resolution process provided by the schemes. The Legal Member considered that this substantially prejudiced the Applicant who has been unable to secure return of any part of the deposit and has also been put to considerable inconvenience. The Legal Member accepted the position of the Applicant that this has caused them financial difficulties, particularly given that the four Applicants are students and that the deposit (albeit shared between the four Applicants) was a significant sum of money to them and, had it been returned to them at the end of the tenancy, or shortly thereafter, would have been

available to them to put towards their accommodation costs for the next academic year, which is now already underway. It was clear from the previous Tribunal Decision in 2019 against the Respondent (in respect of which the Respondent had been in attendance) that she was experienced as a landlord and, at that time, let out two properties and was in the process of acquiring a third. She had stated in that case that she was well aware of her responsibilities as a landlord in terms of tenancy deposits and had always, until then, placed the deposits in a scheme. The Legal Member agreed with the submissions of the Applicant that the fact that this was not the first time the Respondent had been found by the Tribunal to have breached the 2011 Regulations should have a significant bearing on the Legal Member's assessment of the appropriate sanction to be imposed here. The Legal Member considered that this breach of the 2011 Regulations was towards the more serious end of the scale. The Respondent's failures in respect of the tenancy deposit appeared to have been deliberate, rather than inadvertent, and there was no attempt by her at the end of the tenancy, to resolve the matter by placing the deposit in a scheme (albeit late) or refunding the deposit to the Applicant. Indeed, the Respondent seemed intent on retaining the whole deposit. The Legal Member accepts the position put forward by the Applicant that the Respondent had sought to take advantage of the Applicant and their accommodation / financial difficulties as students. Weighing all of the above factors, the Legal Member determined that £5,000 (double the amount of the tenancy deposit) was the appropriate amount of the sanction to be paid by the Respondent to the Applicant.

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

30 October 2023
Date