

**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 27 of the First-tier (Housing and  
Property) Procedural Rules 2017**

**Chamber Ref: FTS/HPC/PR/19/3202**

**Re: Property at 75 Kingfisher Drive, Inverurie, AB51 6AF ("the Property")**

**Parties:**

**Mr Michael Goldberg, 36 The Spinney, Watford, WD17 4QF ("the Applicant")**

**Mr Michael Naysmith, Stonefield Cottage, Durno, Inverurie, AB51 5EP ("the  
Respondent")**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined to make an order against the Respondent in favour of the  
Applicant in the sum of Three hundred and twenty five pounds (£325) Sterling.**

**Background**

- 1 By application dated 8 October 2019 the Applicant sought an order for payment as a result of the Respondent's failure to lodge his deposit with an approved tenancy deposit scheme within the statutory timescales.
- 2 By Notice of Acceptance of Application dated 5 November 2019 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 8 January 2020.
- 3 A copy of the application paperwork together with the date, time and location of the Case Management Discussion was served on the Respondent by Sheriff Officers on 2 December 2019.

- 4 Following service of the application written representations were received from the Respondent on 18<sup>th</sup> December 2019. A copy of the Respondent's written representations were sent to the Applicant.
- 5 The Case Management Discussion took place on 8<sup>th</sup> January 2020. The Respondent was in attendance. The Applicant did not attend. Having been satisfied that the Applicant had received notice of the Case Management Discussion the Legal Member determined to proceed in his absence and refused the application.
- 6 The Applicant subsequently sought a review of the Tribunal's decision of 8<sup>th</sup> January 2020. He advised that he had endeavoured to send an email to the Tribunal advising that he was unable to attend the Case Management Discussion but it had gone into his junk mail. Following review, the Tribunal determined to set the decision of 8<sup>th</sup> January 2020 aside and fix a further Case Management Discussion. Reference is made to the decision of the Tribunal dated 13<sup>th</sup> January 2020 in this regard. A Case Management Discussion was assigned for 3<sup>rd</sup> March 2020. The Applicant responded to notification of the Case Management Discussion with further written representations which were crossed over to the Respondent.

#### **The Case Management Discussion**

- 7 The Case Management Discussion took place on 3<sup>rd</sup> March 2020. Both parties were present.
- 8 The Legal Member explained the purpose of the Case Management Discussion and the procedure to be followed. She proceeded to take the parties through the facts of the case, based on her understanding of the papers. She sought clarification from the parties on specific points.
- 9 Mr Naysmith explained that he was not advised of the payment received by Stonehouse Lettings on 28 October 2015 from Mr Goldberg. He had received the two payments from him on 9<sup>th</sup> October and 14<sup>th</sup> October 2015 which amounted to £950. The property was the only house that he rented out. He had understood that the agent Stonehouse Lettings had dealt with the deposit at the time. When Mr Goldberg had queried the deposit he started looking back to see where it had come from. It transpired that it had been transferred to his account from a company called Mountview, however fees had been deducted from it therefore it wasn't apparent what the payment was. He didn't query the payment at the time. His understanding was that Stonehouse had accepted the deposit and paid it in the scheme. He had a previous tenant at the property where the letting agent had dealt with the deposit, however this had been prior to the introduction of the landlord duties in relation to tenancy deposits. Mr Naysmith conceded that he wasn't aware of the timescale for lodging the deposit with a scheme so accepted that he was at fault. Once he



became aware he took steps to lodge the deposit in the tenancy deposit scheme.

- 10 Mr Goldberg explained that he felt the deposit was probably only lodged after he had referred in correspondence with Mr Naysmith to making an application to the Tribunal. If Mr Naysmith had received the sum of £975 minus expenses from Mountview Ltd, surely he would have queried a payment going into his account. Mr Goldberg explained that the rent was always paid directly to Mr Naysmith, not the deposit. The Legal Member referenced the email from Stonehouse Lettings on 28<sup>th</sup> October which appeared to ask for payment of rent. Mr Goldberg advised that if the payment of £950 was to be treated as a deposit it still hadn't been lodged with the scheme. Mr Naysmith advised that he had treated the payment of £950 as the first months rent, albeit it was £25 short. Mr Goldberg conceded that the deposit had ultimately been paid into a tenancy deposit scheme.
- 11 The Legal Member advised that she was in a position to make a finding that there had been a breach of the landlord's duty to place the deposit in an approved tenancy deposit scheme within the statutory timescales. The Tribunal was therefore obliged to make an award against the landlord up to a sum of three times the deposit. The Legal Member therefore asked both parties to make submissions on the level of sanction that would be appropriate having regard to the particular circumstances of the case, as well as any mitigating circumstances in relation to the breach.
- 12 Mr Naysmith advised that there was confusion at the time regarding the payments received. This was not helped by him being out of the country when the agreement was signed. It was dealt with by his agent. Mr Naysmith further pointed out that the deposit had not been paid to him, but to Stonehouse Lettings. When this was identified he had paid it into a scheme immediately. It was an administrative error that he accepted. Mr Naysmith recited the aims of the tenancy deposit scheme. By placing the deposit into an approved scheme Mr Naysmith didn't consider there to be any loss to Mr Goldberg. Mr Naysmith then highlighted a recent review of tenancy deposit schemes which indicated that greater assistance was required for landlords and tenants. He submitted that the purpose of the scheme should not be to punish landlords for administrative errors.
- 13 Mr Goldberg wished to reiterate that tenancy ended on 13<sup>th</sup> September 2019 and deposit was only lodged on 18<sup>th</sup> September 2019. He had been chasing the deposit, even prior to the tenancy ending. For Mr Naysmith to suggest it had been lodged as soon as he was made aware was slightly false. It was more likely that it was lodged when Mr Goldberg had mentioned the legislation.

- 14 The Legal Member thanked parties for their submissions and advised that the decision of the Tribunal would be issued in writing.

### **Findings in Fact and Law**

- 15 The parties entered into a Tenancy Agreement which commenced on 30<sup>th</sup> October 2015.
- 16 In terms of Clause 1.14 of the said Tenancy Agreement the Applicant undertook to pay a deposit of £975.
- 17 On 9<sup>th</sup> October 2015 the Respondent received a payment of £625 from the Applicant.
- 18 On 14<sup>th</sup> October 2015 the Respondent received a payment of £325 from the Applicant.
- 19 On 28<sup>th</sup> October 2015 the Applicant made a payment of £975 to Mountview Investments, trading as Stonehouse Lettings Ltd. Stonehouse Lettings Ltd were instructed by the Respondent to undertake the work required at the commencement of the tenancy.
- 20 The total sum paid by the Applicant between 9<sup>th</sup> October 2015 and 28<sup>th</sup> October 2015 of £1925 equated to the deposit and the first months rent.
- 21 The deposit was not paid into an approved tenancy deposit scheme within 30 working days of commencement of the tenancy.
- 22 The tenancy between the parties terminated on 13<sup>th</sup> September 2019.
- 23 The Respondent did not become aware of the payment of £975 to Stonehouse Letting until on or around 18 September 2019. The Respondent subsequently arranged for the sum of £975 to be lodged in an approved tenancy deposit scheme, namely MyDeposits Scotland.

### **Reasons for Decision**

- 24 The Tribunal determined the application having regard to the application paperwork, the written representations from the Applicant and Respondent and the verbal submissions from both parties at the Case Management Discussion. The Tribunal was satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. The



substantive matters were not in dispute and there were no issues to resolve that would require evidence to be heard.

- 25 The Tenancy Deposit Scheme (Scotland) Regulations 2011 specify clear duties which are incumbent on landlords in relation to tenancy deposits. Regulation 3 requires a landlord to pay any deposit received in relation to a relevant tenancy to an approved tenancy deposit scheme within thirty working days of the beginning of the tenancy. The deposit must then be held by the scheme until it can be repaid in accordance with the requirements of the Regulations following the end of the tenancy. This gives both parties the benefit of the scheme's independent scheme dispute resolution process in order to resolve any dispute that may arise regarding repayment of the deposit.
- 26 Both parties were in agreement that the Respondent did not pay the deposit into an approved tenancy deposit scheme in accordance with his duties under Regulation 3 and within the statutory timescale. Regulation 9 provides that any tenant may apply to the Tribunal for an order where the landlord has not complied with the duty under regulation 3. Further, under Regulation 10 in the event of a failure to comply, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. Accordingly having been satisfied that the Respondent had failed to comply, the Tribunal then had to consider what sanction to impose having regard to the particular facts and circumstances of the case.
- 27 The Tribunal noted the purpose of Regulation 10, namely to penalise landlords to ensure they comply with the duty to protect and safeguard tenancy deposits. The provisions of Regulation 10 leave no discretion where a landlord is found to have failed to comply and permit an award of up to three times the deposit where a finding of breach is made.
- 28 The Tribunal considered the requirement to proceed in a manner which was fair, proportionate and just, having regard to the seriousness of the breach. In doing so the Tribunal took into account the fact that the deposit had remained unprotected for the entire term of the tenancy and had only been lodged with an approved scheme five days after the tenancy had ended. However the Tribunal also accepted the Respondent's account of what had transpired both at the commencement and the termination of the tenancy. The Tribunal found his narration to be credible and reflected the correspondence at the time between the parties which had been lodged as part of his written representations. He had been candid in accepting that the breach had occurred. When he became aware of the failure to lodge the deposit with a scheme he had taken steps to remedy the situation and the Applicant had therefore had the benefit of the independent dispute resolution process available. Whilst the Applicant expressed scepticism regarding the



Respondent's position in this regard, he had not put forward anything to directly contradict it.

- 29 It was clear to the Tribunal that there was confusion at the commencement of the tenancy around which payments were to be attributed to rent, and which were to be attributed to the deposit. The Respondent had considered the payment made to him by the Applicant by way of two instalments on 9 October 2015 and 14<sup>th</sup> October 2015 in the sum of £950 to be the first months rent. He had not been made aware that an additional payment of £975 had been made to his letting agent, having received a payment from Mountview Ltd for a different sum. The Applicant initially stated that the payment of £950 made to the Respondent was the first months rent and the payment of £975 made to Mountview Ltd (trading as Stonehouse Lettings) was the deposit. However this contradicted email correspondence at the time from Stonehouse Lettings which requested payment of the first months rent prompting the Applicant to confirm that said payment had been made to them. The Tribunal therefore concluded that there had been a lack of clarity around what payments should be attributed to which obligation under the tenancy agreement at the time and it was reasonable to assume that this would have likely resulted in the oversight which led to the breach.
- 30 Balancing the competing factors in the particular facts and circumstances of the application, the Tribunal considered that this was a case where a sanction at the lower end of the scale would be appropriate, having regard to the mitigating factors put forward by the Respondent. The Tribunal accepted that the breach had arisen from an administrative error, that the Respondent had been candid in accepting the breach, that he had taken steps to place the deposit into a scheme as soon as he became aware of the position, and that the Applicant had not been prejudiced as a result of having had the benefit of the fair and impartial dispute resolution process offered by the deposit scheme.
- 31 The Tribunal was however aware that the landlord is ultimately responsible for ensuring compliance with their duties under the 2011 Regulations, regardless of whether or not they employ an agent, therefore the Respondent had a responsibility in this regard to ensure he was fully aware of the duties and obligations incumbent on him as a landlord and to comply with same. The Tribunal also noted one of the main objectives of the 2011 Regulations was to ensure deposits are safeguarded throughout the entire term of a tenancy which had not happened in this case. By imposing a sanction, the Regulations seek to actively encourage landlords to comply with the legislation, even in circumstances where the breach has been rectified by the time an application to the Tribunal is made.
- 32 The Tribunal therefore made an order against the Respondent in the sum of £325, being one third of the deposit. The Tribunal considered this to be a fair

and proportionate amount having regard to the particular circumstances of this application.

- 33 For the avoidance of doubt the Tribunal did not take into account in its determination of the application any representations regarding the conduct of the Applicant during the tenancy in relation to non-payment of rent as it did not consider these to be relevant to its determination of the application.

### **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.**

**R. O'Hare**

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**Legal Member/Chair**

3/3/20  
\_\_\_\_\_  
**Date**