Housing and Property Chamber
First-tier Tribunal for Scotland

Review of a Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules") in respect of a Decision made under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations") and Rule 103 of the Rules

Chamber Ref: FTS/HPC/PR/20/0638

Re: Property at 11 Baird Gait, Cambuslang, Glasgow, G72 8SS ("the Property")

Parties:

Mr Paul Walker, 22 Coulters Crescent, Carmunnock, Glasgow, G76 9AY ("the Applicant")

Mr Philip Rough, Flat 4/1, 10 Haughview Terrace, Glasgow, G5 0HB ("the Respondent")

Tribunal Members:

Karen Moore (Legal Member)

This Review should be read in conjunction with Decision dated 6 August 2020 and Decision to Review dated 18 September 2020

Outcome of Review

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") having reviewed its Decision of 6 August 2020 in terms of Rule 39 of the Rules determines that the Decision should stand unaltered.

Background

1. By application received between 24 February 2020 and 26 March 2020 ("the Application"), the Applicant made an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Chamber") for a determination and an order in terms of Rule 103 of the Rules and Regulation 9 of the Regulations. On 1 April 2020, the Chamber President accepted the Application and a Case Management Discussion ("CMD") was fixed for 6 August 2020 at 14.00 by telephone conference call. The Application was intimated to the Respondent. The CMD was intimated to both Parties. The CMD was intimated to the Respondent by Sheriff Officer.

2. The CMD took place on 6 August 2020 at 14.00. The Applicant took part. The Respondent did not take part. The outcome of the CMD was that the Tribunal determined that the Respondent had been in breach of the Regulation 9 of the Regulations as he had not lodged the tenancy deposit within the timeframe set out in Regulation 3 nor had he provided the Applicant with the information required by Regulation 42. The Tribunal proceeded to make an Order for Payment in the sum of £2,600.00, being twice the amount of the tenancy deposit.

3. The Tribunal's Decision dated 6 August 2020 was intimated to the Parties.

4. Subsequent to the issue of the Decision to the Parties, the Respondent and the Chamber administration under the instruction of the Tribunal entered into correspondence, which correspondence is narrated in full in the Decision to Review dated 18 September 2020. The outcome of this correspondence was that the Tribunal determined to review its decision at its own instance.

5. The Tribunal then gave Notice to the Parties of its Decision to Review in terms of Rule 39(4)(a) of the Rules and set Monday 5 October 2020 as the date by which the Parties were to respond to the review and sought the views of the Parties on whether the Review could be determined without a hearing.

Parties' responses to the Notice of the Decision to Review

6. Both Parties submitted written responses to the Notice of the Decision to Review.

7. Shortly before the issue of the Notice of the Decision to Review, the Respondent by email on 12 September 2020 wrote as follows:
"Your email (Please see attachment) does not state that you were looking for a response it details options only, this email which was sent to yourself on the 17.08.20 was asking the following question: No reference to any information that was provided or any acknowledge within the written decision, in contrary to the statement iv as shown below when in fact there was information had been provided. Iv, No information in respect of the lodging of the tenancy deposit was provided by the Respondent to the Applicant. that it seems nothing as been provide to the legal department and and made myself available for the for the 06.08.20 but no contact was for the phone meeting, your colleague informed me to detail the above and email you, not hearing from you with the above emails that have been sent hence why I called today for confirmation, can you please review the above. No answer was ever provided until the 27.09.20 stating it was sent. 22.08.20: Please see attachment email sent to Mr David Morton providing my response to tribunal to review its decision. Is there anything else that I need to provide ?"
The Tribunal considered this as part of its review.

8. The Respondent included with that email an email and documents which he had submitted to the Tribunal on 21 July 2020. This email of 21 July 2020 stated:
"As requested, please find my reply to the dispute that Mr Paul Walker has raised, the tenancy agreement was already in occupation of the property and was under the impression that the previous tenancy agreement continued (tacit relocation) and the registering of the deposit within 30 working days. Please see attachments for the following: 27.04.18: Tenancy agreement sent to Mr Walker. 26.06.18: Received tenancy agreement signed from Mr Walker. 06.07.18: On a personal note, if there was a delay in registering with safety deposit Scotland this may have slipped my mind due to dealing with my mother's admittance to a care home due to dementia. 28.08.18: Registered with Safe Deposit Scotland. Would like to highlight that it appears odd that this is being raised several years after the fact."
The Tribunal noted that this email and these attachments were before the Tribunal at the CMD on 6 August 2020. A copy of an application by the Respondent to the Upper Tribunal was also attached. This was not before the Tribunal on 6 August 2020 and is not a matter on which the Tribunal can comment.

9. By email dated 7 October 2020, the Respondent submitted further : *"Thank you for providing the information, my comments in return to Mr Walkers email dated 01.10.20: POINT 9: Information was provided in advance but there was no reference to anything*

throughout the decision. POINT 11: Consider that I've followed the rules is highlight that the outcome was not justified, and was within my right to raise my objections."

10. The Applicant, by email dated 1 October 2020 submitted the following:
"It is somewhat disappointing that we find ourselves potentially having another hearing given the evidence that has been put forward. As I highlighted in the original hearing of 06AUG20, I hoped for a speedy resolution but indicated that if this was not the case and that if the decision was appealed and a further hearing scheduled, at this hearing I would be requesting that a maximum award be granted of £3,900. This is now my stance. I note with interest the following from the attached: Point 9 "..did not comply with the Rules." Point 11 ".. the Respondent fails or refuses to challenge the Decision in terms of the Rules." I look forward to hearing from you with the hope to conclude this at the earliest convenience."
By email dated 8 October 2020, the Applicant confirmed that he did not seek a Hearing.

Review of Decision

11. In reviewing its Decision of 6 August 2020, the Tribunal gave consideration to all of the information before it at the CMD, to the correspondence which post-dated the issue of that Decision and to the Parties' submissions in response to the Notice of the Decision to Review.

12. The Tribunal noted that the Respondent, in his emails of 12 September 2020 and 7 October 2020, challenged Finding in Fact (iv) of the Decision dated 6 August 2020, which Finding in Fact states: "*No information in respect of the lodging of the tenancy deposit was provided by the Respondent to the Applicant* ". The Tribunal refers to the Respondent's emails of 12 September 2020 and 7 October as noted in paragraphs 7 and 9 above that the Respondent questions the accuracy of this Finding in Fact in light of his email of 21 July 2020 with documents. The Tribunal accepts that, in its Decision dated 6 August 2020, it did not specifically mention the Respondent's email of 21 July 2020 with documents attached. However, the Tribunal had all of that information before it at the CMD on 6 August 2020 and did not, at that time, find any evidence or facts therein that the Respondent had lodged the tenancy deposit within the timeframe set out in Regulation 3 of the Regulations and had provided the Applicant with the information required by Regulation 42 of the Regulations.

13. The Tribunal noted that the Respondent, in his email of 12 September 2020 stated that he had "*made myself available for the for the 06.08.20 but no contact was for the phone*

meeting". The Tribunal noted that Application and CMD details had been served on the Respondent by Sheriff Officer and so was satisfied that the Respondent had been made aware of how to take part in the CMD by telephone conference.

14. In reviewing its Decision of 6 August 2020, the Tribunal again gave consideration to the Respondent's email of 21 July 2020 with documents attached. The email of 21 July 2020 does not state that the Respondent complied with the Regulations. The documents submitted with that email comprise copies of (i) the tenancy agreement between the Parties; (ii) correspondence between the Parties in respect of the tenancy agreement, the condition of the property and the payment of the deposit by the Respondent to, presumably, the Applicant's letting agent; (iii) correspondence to the Respondent from Glasgow Health care Partnership and (iv) email correspondence from SafeDeposits Scotland dated 28 August 2018 which states *" Hi Philip, You do not need to provide the tenant with a reference number. Once the deposit funds have been received and allocated to the account we will issue the tenant with log-in details and repayment instructions, and a copy of the Deposit Protection Certificate which acts as receipt for the funds. KInd regards, David. SafeDepositsScotland"*

15. The Tribunal, again, found that there is nothing within email of 21 July 2020 and the documentation which shows that the Respondent had lodged the deposit in accordance with the Regulation 3 of the Regulations and that information in respect of the lodging of the tenancy deposit was provided by the Respondent to the Applicant as required by Regulation 42 of the Regulations. With regard to the email correspondence from SafeDeposits Scotland dated 28 August 2018, the Tribunal took the view that this sets out what actions the tenancy deposit scheme provider will take but does not dispense with the statutory requirement on the Respondent to comply with Regulation 42 of the Regulations.

16. The Tribunal also had regard to its notes of the CMD and noted that it specifically asked the Applicant if he had paid a tenancy deposit of £1,300.00 as stated in the Application and asked him if he had been advised by the Respondent of which tenancy deposit scheme provider had been lodged with and when the deposit had been lodged. The Applicant confirmed that he had lodged the deposit of £1,300.00 on 3 May 2018 as stated in the Application but had not been advised by the Respondent of with which tenancy deposit scheme provider the deposit had been lodged nor when.

17. Taking together the Respondent's email of 21 July 2020 and the Applicant's submissions at the CMD, the Tribunal is satisfied that Finding in Fact (iv) of the Decision dated 6 August

2020 which states: "*No information in respect of the lodging of the tenancy deposit was provided by the Respondent to the Applicant* "is accurate.

18. Accordingly, there being no new information before the Tribunal and there being nothing before the Tribunal to show that the Respondent had complied with Regulations 3 and 42 of the Regulations, the Tribunal determined that the outcome of its review of its Decision of 6 August 2020 is that the Decision should stand unaltered.

19. The Tribunal had regard to the Applicant's response to the Notice of the Decision to Review that "*if the decision was appealed and a further hearing scheduled, at this hearing I would be requesting that a maximum award be granted of £3,900." This is now my stance.".* This current procedure is not an appeal but a review and there is no Hearing. In any case, the right of appeal is a statutory right afforded to both Parties and is unconnected to the basis on which Regulation 10 of the Regulations is applied. It would, therefore, be perverse for the Tribunal to increase the sum awarded in terms of Regulation 10 on the basis that the Respondent had exercised a statutory right. The Tribunal noted that, at the CMD, it had advised the Applicant of the Parties' rights in terms of the Rules to recall, review and appeal.

Karen Moore

_____ **16 October 2020**

Legal Member/Chair **Date**