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 The Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/20/1231

Re: Property at Top Floor Flat Right, 77 Western Road, Aberdeen, AB24 4DR ("the Property")

Parties:

Rory James Kyle, Mr Marcus Wadland, 5 Chapel Close, North Curry, Taunton, Somerset, TA36 6JW; 4 Challum Loan, Broughty Ferry, Dundee, Tayside, DD5 3UT ("the Applicant")

Ms Isla Cheyne, 80 Whitehall Place, Aberdeen, AB25 2PJ ("the Respondent")

Tribunal Members:

Richard Mill (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an Order for Payment against the Respondent should be made in the sum of One Thousand Seven Hundred Pounds Sterling (£1,700)

<u>Introduction</u>

This is an application under The Tenancy Deposit Schemes (Scotland) Regulations 2011.

A Case Management Discussion (CMD) took place by teleconference on 20 August 2020 at 2pm.

The Applicants both joined personally and represented their own interests.

Service was of the proceedings was lawfully served on the Respondent on 30 July 2020 by Sheriff Officers. The Respondent had not lodged any response or written submissions. She did however join the conference and represented her own interests.

All parties had the opportunity of making representations.

<u>Findings And Reasons</u>

The Property is 77 Western Road, Aberdeen AB24 4DR.

The Applicants are the former joint tenants. The Respondent is the former landlord. The parties entered in to a lease arrangement for the property commencing on 2 July 2018 (the written lease erroneously states that the lease commenced 2 years earlier in 2016).

The Applicants paid a deposit in the sum of £850 in late May 2018 (the written lease erroneously states that the deposit was £825). Under the Regulations the Respondent had a legal duty to pay the deposit into an approved scheme within 30 days.

The Respondent is a registered landlord. The letting of properties is her main business interest and she is involved in the letting of a total of 28 properties.

The Applicants vacated the property on 30 April 2020 and requested return of their deposit of £825 after the lease ended. They identified that their deposit of £850 was not held by SafeDeposits Scotland as was specified in the written lease.

Upon making enquiries with the Respondent, an email was received by the Applicants on 25 May 2020. The Respondent acknowledged that she had not complied with the Regulations. She stated that her letting agent, Homeguard Leasing, commenced the let but did not manage the tenancy thereafter. The deposit which had been paid to that organisation had been made over to her at the time. She states that she understood the receipt of this money at that time to be a payment of rent, not the deposit. She states that a clerical error occurred. On tracing matters back she had identified her error for which she has apologised.

The Respondent then paid the deposit to an approved scheme at the time of identifying her earlier error – on 22 May 2020, after the tenancy ended. On 28 May 2020 the Applicants received an email form SafeDeposits Scotland advising that their organisation had received their "new tenancy deposit". This was however almost 2 years after the lease commenced and the deposit was paid. This email has been lodged with the Tribunal.

The Respondent provided the same explanation to the Tribunal at the CMD.

The Tribunal attached weight to the terms of the Respondent's own email and oral admission and the email from Safe Deposits Scotland, both of which the Tribunal finds credible and reliable.

The Tribunal finds that the Respondent has breached Regulation 3 by failing to pay the Applicant's deposit into an approved scheme.

In terms of Regulation 10 the Tribunal must an order against the Respondent for an amount not exceeding three times the amount of the deposit.

There are some mitigating circumstances in this case. The Respondent is a registered landlord. She was candid in her communications with the Applicants at an earlier stage and admitted her culpability and apologised. She did ultimately pay the deposit money into an approved scheme and as a consequence the return of the deposit (which was the subject of some dispute) is being administered by the scheme. £470 of the original deposit is still the subject of dispute.

The maximum sum which can be imposed against the Respondent is three times the tenancy deposit of £850. The Respondent has not breached the Regulations previously. She has been candid about her failure and cooperated in the CMD. It seems unlikely there will be any repetition. Nonetheless the protection of tenancy deposits is a basic but essential duty which applies to all landlords and those who are delegated with such responsibilities. The public must have trust and confidence in their deposits being properly protected in accordance with the Regulations at all times. The Applicants have been understandably distressed and inconvenienced by the breach of the Regulations. The resolution of the deposit dispute has been delayed. The Respondent has the means to pay an Order made against her. In all of the circumstances it is fair and proportionate that an Order for a sum representing two times the deposit to be made against the respondent. This equates to £1,700.

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.

Richard Mill

20 August 2020

Legal Member/Chair **Date**