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 Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/19/3094

Re: Property at 70D Mcdonald Court, Jute Street, Aberdeen, AB24 3HB ("the Property")

Parties:

Miss Chithra Seenivasan, 14 F Sandilands Drive, Aberdeen, AB24 2PX ("the Applicant")

Mr Stuart McFarlane, 20 Silverburn Road, Bridge of Don, Aberdeen, AB22 8RU ("the Respondent")

Tribunal Members:

Valerie Bremner (Legal Member)

Decision

Background

This is an Application in terms of Rule 103 of the Tribunal Rules which was made on 1 October 2019.The Application was accepted by the Tribunal on 15th October 2019 and the Case Management Discussion took place on 19 December 2019, an earlier Case Management Discussion having been postponed.

Discussion

Both the Applicant and Respondent attended the Case Management Discussion and represented themselves.

The Tribunal had sight of the Application, the tenancy agreement,text messages, bank statements, emails from a Tenancy Deposit Scheme and written representations received from the Respondent.

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The parties agreed that this was a relevant tenancy within the meaning of the legislation and that the tenancy agreement had started on 1st January 2019 and ended on 30 September 2019.Another tenant was named on the agreement and that tenant along with the Applicant each paid £100 by way of deposit making a total deposit of £200 paid in respect of the tenancy.That other tenant a Miss Koller had left the property after a few months and had been replaced by another tenant who did not pay a deposit for the property.

The Respondent had entered written representations to the Tribunal whereby he admitted that he had failed to pay the Deposit into an approved scheme and at the case management discussion he accepted that meant that no written information as required under Regulation 3 as to the whereabouts of the Deposit had been given to the Applicant.

An issue arose as to the landlord in terms of the tenancy agreement where both the Respondent and his wife were named as landlords but the Application had proceeded against the Respondent only. After discussion the Respondent asked that the matter be continued to allow his wife to be added as a new party. The Applicant did not wish to have the matter continued or to add a new party and explained that she had always regarded the Respondent as her landlord and her dealings had been with him at all times. The Respondent did not dispute that.

After consideration and having regard to the facts before me and the overriding objective in dealing with matters set out in Rule 2 of the Tribunal Rules, the Tribunal refused the request to continue to consider adding a new party to the Application.It was clear that the Applicant had always regarded the Respondent as her landlord and the tenancy agreement had proceeded on that basis. He did not dispute being the landlord and had accepted his failure to lodge the deposit within a scheme.In addition there was evidence from one of the Deposit Schemes lodged by the Applicant confirming that this was the case. The Tribunal was satisfied that the Application should properly proceed against the Respondent and that it would not be appropriate at this stage to continue to consider adding a new party to the Application.

The Tribunal then turned to the issue of sanction.The Respondent had described his failure to adhere to the Regulations as an error of judgment and had apparently wrongly considered that the deposit of £100 from each tenant being such a small amount in relation to the rent meant that he did not require to bother to lodge this in a scheme.He now understood the mistake and had stopped taking deposits for this his only rental property.He explained his reasoning for taking low deposits as he let mainly to students and did not feel it appropriate to ask for up to two times the monthly rent as he felt students could not afford this.He always returned deposits he said and confirmed he had returned the deposit to both the Applicant and Miss Koller.He regarded himself as landlord who tried to deal with all matters fairly and had admitted his error.

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The Applicant made no submissions as to the amount of any sanction to be imposed but accepted that she had received her deposit back in full.

The Tribunal took account of the whole circumstances of the matter including the fact that the deposit had been unprotected for a period of 9 months.The Tribunal adopted the approach set out in Jensen v Fappiano and accepted the Respondent's position that this had been an error of judgment rather than a wilful failure.He had admitted the breach of duty.The appropriate sanction having regard to all of the circumstances appeared to be £150.

The Tribunal observed that since the whole deposit paid by two tenants had been taken into account in making the sanction then it *may* be that the other tenant had a right of relief against the Applicant for some of the sanction awarded but also observed that this was a matter between her and the Applicant and not to be decided by this Tribunal.

Findings in Fact

1.The Applicant and Respondent entered into a relevant tenancy at the property between 1 January 2019 and 30 September 2019.

2.The total deposit paid was £ 200 by the Applicant and another tenant, with each paying £100.

3.The Respondent as landlord failed to comply with the terms of Regulation 3 of the 2011 Regulations.

Reasons for the Decision

It was accepted that this was relevant tenancy and that the deposit should have been paid into one of the Deposit Schemes but had not been so protected.The appropriate sanction was £150 given all the circumstances before the Tribunal at the case management discussion.

Decision

The Tribunal finds that the Respondent failed in his duty in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and imposes a sanction of £150 to be paid by him to the Applicant.

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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.

Valerie Bremner

Legal Member/Chair

19 December 2019

Date

*Insert or Delete as required