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 Section 16 of the Housing (Scotland) Act 2014.

Chamber Ref: FTS/HPC/PR/23/2717

Re: Property at 8 Woodside Terrace, Cardenden, Lochgelly, KY5 0LZ ("the Property")

Parties:

Mr Pawel Kwiatkowski and Danuta Jedlinska, 8 Woodside Terrace, Cardenden, Lochgelly, KY5 0LZ ("the Applicants")

Ms Kathleen Reilly, 1 Inchdairnie Cottages, Kinglassie, Lochgelly, KY5 0UL ("the Respondent")

Tribunal Members:

Shirley Evans (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent failed to comply with her duty as a Landlord in terms of Regulations 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") as amended by The Housing (Scotland) Act 2014 (Consequential Provisions) Order 2017 by failing to pay the Applicants' Tenancy Deposit to the scheme administrator of an Approved Tenancy Deposit Scheme grants an Order against the Respondent for payment to the Applicants of the sum of NINE HUNDRED POUNDS (£900) Sterling.

Background

1. This is an application for an order for payment for where it is alleged the Respondent has not paid a deposit into an approved scheme under the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"). The Application is made under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").

2. The Application was accompanied by the tenancy agreement between the parties for the Property, an email dated 9 August 2023 from Safe Deposits Scotland, an undated email from Letting Protection Scotland and an undated live chat screen shot from My Deposits Scotland.

3. The Respondent's solicitor lodged written submissions on 7 February 2024 in terms of which the Respondent admitted she had not complied with the 2011 Regulations due to an oversight but that on 26 January 2024 the Respondent had transferred the £450 deposit to Safe Deposits Scotland as soon as she was aware of her oversight.

4. A Case Management Discussion ("CMD") proceeded by way of teleconference call on 26 February 2024. The Applicants both appeared on their own behalf. Mr MacDonald from Robert F MacDonald Solicitors appeared on behalf of the Respondent. Ms Adriana Fasula attended as Interpreter.

5. There was very little disagreement between the parties in light of the fact that the Respondent accepted she had not complied with her obligations under the 2011 Regulations. The Respondent's position was that this failure was due to an oversight and that on 26 January 2024 she had transferred the £450 deposit to Safe Deposits Scotland as soon as she was aware of her oversight. However, the Applicants disputed that the Respondent's failure to lodge the deposit was an oversight and that this was deliberate as she had also failed to carry out repairs. Further, they submitted that the deposit had still not been lodged, Mr Kwiatkowski having checked the Safe Deposits Scotland website. The deposit has been unprotected for four years. The CMD was continued to allow Mr MacDonald to check with his client as to whether the deposit had in fact been paid.

6. On 27 February 2024 Mr MacDonald lodged an email dated 26 January 2024 from Safe Deposits Scotland confirming that the deposit of £450 had been lodged.

7. On 11 May 2024 the Applicants lodged written submissions and further documents in relation to a repairing standard case and an email dated 29 February 2024 from Safe Deposits Scotland.

8. On 17 May 2024 Mr MacDonald emailed the Tribunal that the Applicants' submissions and documents were irrelevant as they related to the repairing standard case.

Continued Case Management Discussion

9. The continued CMD took place on 24 May 2024. The Applicants both appeared on their own behalf. Mr MacDonald from Robert F MacDonald Solicitors appeared on behalf of the Respondent. Ms Adriana Fasula attended as Interpreter.

10. Mr MacDonald referred the Tribunal to the email from Safe Deposits Scotland dated 26 January 2024 that confirmed the deposit of £450 was lodged with them on 26 January 2024. He confirmed his case rested with the written submissions lodged prior to the CMD.

11. Mr Kwiatkowski submitted that the Respondent had deliberately not lodged the deposit. He referred to the Respondent failing in other duties towards them as tenants. He submitted the Respondent did not keep her word. When she had lodged the deposit she had given Safe Deposits Scotland the wrong email address and referred to the email dated 29 February 2024 from Safe Deposits Scotland which showed the email address registered with the account was “slightly different”, but had been amended. He submitted this was another example of the Respondent being deliberately difficult. He finally submitted that they had given the Respondent notice that they were intending to leave the Property.

12. In response Mr MacDonald submitted there was no evidence before the Tribunal that would suggest the Respondent had deliberately submitted the wrong email address for the Applicant. It may have been a typographical error.

13. Mr Kwiatkowski submitted the Applicants felt the Respondent ignored them. The deposit had remained unprotected throughout the tenancy.

Reasons for decision

14. The parties were in agreement that they entered into a Private Residential Tenancy commencing 1 February 2020 and that the Applicants had paid a deposit of £450. Further the Respondent accepted that she had not paid this into a scheme administrator.

15. For the purpose of Regulation 9(2) of the 2011 Regulations, an application where a landlord has not paid a deposit into a scheme administrator must be made within three months of the tenancy ending. The Tribunal found that the application was made in time, the tenancy still being in place between the parties.

16. Regulation 3 (1) and (2) of the 2011 Regulations provides –

"(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.

The tenancy in this case was a "relevant tenancy" for the purposes of the Regulations. The Respondent accepts the deposit paid of £450 being transferred from another tenancy in February 2020 was not paid into an approved scheme in terms of the Regulations until 26 January 2024 due to an oversight.

17. The 2011 Regulations were intended, amongst other things to put a landlord and a tenant on equal footing with regard to any tenancy deposit and to provide a mechanism for resolving any dispute between them with regard to the return of the deposit to the landlord or tenant or divided between both, at the termination of a tenancy. They were designed to prevent any perceived "mischief" by giving a landlord control over the return of the deposit at the termination of a tenancy.

18. The amount to be paid to the Applicants is not said to refer to any loss suffered by the Applicants. Accordingly, any amount awarded by the Tribunal in such an application cannot be said to be compensatory. The Tribunal in assessing the sanction level has to impose a fair, proportionate and just sanction in the circumstances, taking into account both aggravating and mitigating circumstances, having regard to the purpose of the 2011 Regulations and the gravity of the breach. The Regulations do not distinguish between a professional and non-professional landlord such as the Respondent. The obligation is absolute on the landlord to pay the deposit into an Approved Scheme.

19. In assessing the amount awarded, the Tribunal has discretion to make an award of up to three times the amount of the deposit, in terms of Regulation 10 of the 2011 Regulations.

20. The Tribunal considered the Respondent had admitted her failure to comply with the 2011 Regulations. The Respondent had explained this was an oversight on her part. Although the Applicants claimed this was deliberate on her part, the Tribunal considered that that was an unsubstantiated assertion. Although the Applicants had lodged evidence of another action regarding the repairing standard with the Respondent, the Tribunal did not consider that that was an indication that the Respondent's failure to lodge the deposit was deliberate. The Tribunal preferred the submissions made by Mr MacDonald

that the failure was due to an oversight when a previous deposit for the Applicants' former tenancy which she thought was being transferred to this tenancy was in fact paid transferred back into the Respondent's bank account on 19 February 2020. Although the Respondent's position was that as soon as she became aware of this oversight, she had paid the Applicants' deposit into Safe Deposits Scotland, that took nearly four years for her to do so. The Tribunal was of the opinion that the Respondent as a Landlord should have realised the error before the application was raised and taken pro-active steps to lodge the deposit. It took the Applicants' application to alert her to the fact the deposit had not been paid. The deposit had accordingly been unprotected throughout most of the tenancy for nearly four years.

21. Despite the Tribunal being satisfied that the Respondent had failed to comply with her duties under Regulations 3 (1) of the 2011 Regulations, the purpose of the 2011 Regulations had not been defeated. The deposit was with Safe Deposits Scotland and as the tenancy was coming to an end, they would determine how the deposit should be distributed between parties at termination.

22. In all the circumstances the Tribunal considered that a fair, proportionate and just amount to be paid to the Applicants by way of sanction was two times the amount of the deposit.

Decision

23. The Tribunal accordingly made an Order for Payment by the Respondent to the Applicants of £900.

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.

S Evans

24 May 2024

Legal Member **Date**