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 14 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/PR/24/0977

Re: Property at 11 Warout Brae, Glenrothes, Fife, KY7 4JP ("the Property")

Parties:

Mr William Fraser and Nicola Fraser, 11 Warout Brae, Glenrothes, Fife, KY7 4JP ("the Applicant")

Mr John Standaloft, previously of 29 Thurlow Way, Houton le Spring, Durham, DH5 8NW and whose present wherabouts are unknown ("the Respondent")

Tribunal Member:

Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent failed to comply with his 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 and grants an Order against the Respondent for payment to the Applicants of the sum of ONE THOUSAND FIVE HUNDRED POUNDS (£1500) Sterling.

Background

1. This is an application dated 28 February 2024 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 a copy of a short assured tenancy between the parties dated 21 December 2007, text discussions between the Applicants and Respondent discussing the deposit and screenshots from My Deposits Scotland, Letting Protection Scotland and Safe Deposits Scotland.

3. On 5 March 2024, the Tribunal accepted the Application under Rule 9 of the 2017 Regulations.

4. On 21 May 2024 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 27 June 2024. Sheriff Officers reported that they were unable to serve this paperwork on the Respondent. The CMD assigned for 27 June 2024 was accordingly postponed and a new CMD assigned to proceed on 2 October 2024. Intimation of the CMD on the Respondent proceeded by way of advertisement on the Tribunal website in terms of Rule 6A of the 2017 Regulations.

5. On 3 June 2024 the Applicant's representative lodged written submissions in support of the application and an email from Fife Properties, the Respondent's letting agents dated 21 March 2024.

Case Management Discussion

6. The Tribunal proceeded with the CMD on 2 October 2024 by way of teleconference. Ms Watson from Frontline Fife appeared for the Applicants. There was no appearance by or on behalf of the Respondent despite the CMD starting 5 minutes late to allow him time to join. The Tribunal was satisfied that the CMD had been intimated on him in terms of Rule 6A of the 2017 Regulations and accordingly proceeded in his absence.

7. The Tribunal had before it a copy of the application with written submissions lodged in support, the short assured tenancy between the parties dated 21 December 2007, text discussions between the Applicants and Respondent discussing the deposit, screenshots from My Deposits Scotland, Letting Protection Scotland and Safe Deposits Scotland and the email dated 21 March 2024 from Fife Properties.

8. Ms Watson explained that the tenancy between the parties terminated on 1 March 2024. In her submissions Ms Watson explained the tenancy commenced on 21 December 2007 and a deposit of £500 cash had been paid, but never paid into one of the scheme administrators nor was statutory information provided to the Applicants. The Applicants did ask about the deposit being put in a scheme via text message in February 2014. Ms Watson went onto explain that when the tenancy was terminated, she contacted Fife Properties on behalf of the Applicant to see why this deposit was not lodged in a scheme. They replied say that it was an oversight by the Respondent and that the deposit was lodged in a scheme at the start of the tenancy, but not

transferred to Fife Properties when the Respondent had changed letting agents. Ms Watson could find out no more information and the Applicants had no information of a deposit being lodged or withdrawn. The Tribunal noted the content of the email dated 21 March 2024 from Fife Properties and queried its accuracy as it stated "*The deposit was lodged in a scheme at the start of the tenancy this was lodged by the previous letting agent, it also states in the tenants' lease that there is a deposit. When the landlord moved from his old agent to Fife Properties the deposit was never transferred over to our scheme."* The Tribunal queried how the deposit could be lodged with a scheme administrator at the start of the tenancy in 2007 before the 2011 Regulations and how if a deposit was lodged the three scheme administrators had absolutely no record of it with reference to the screen shots from the three scheme administrators lodged. The tenancy deposit of £500 has however been paid to the Applicants after she had contacted Fife Properties.

Reasons for decision

9. 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 application being dated 28 February 2024 and the tenancy terminating on 1 March 2024.

10. In this case Clause 4 of the short assured tenancy regarding the commencement and termination date had not been completed. The tenancy was signed on 21 December 2007. The tenancy was continuing on a yearly basis by way of tacit relocation.

11. The 2011 Regulations came into force on 2 July 2012, just over 4 and a half years after the tenancy agreement commenced. The Tribunal accordingly did not accept that the deposit had been paid into a scheme administrator at the start of the tenancy by another letting agent as claimed by Fife Properties. Regulation 3 of the 2011 Regulations provides for a tenancy deposit of a relevant to be paid into a scheme administrator and information on the deposit provided to the tenant within 30 working days of the start of a tenancy.

12. There are transitional provisions where a tenancy deposit was paid before the 2011 Regulations came into force. Regulation 47 provides:

    Where the tenancy deposit was paid to the landlord before the day on which these Regulations come into force, regulation 3 applies with the modification that the tenancy deposit must be paid, and the information provided, within 30 working days of the date determined under paragraph (a) or (b)—
    (a)where the tenancy is renewed, by express agreement or by the operation of tacit relocation, on a day that falls three months or more, but less than nine months, after the first day on which an approved scheme becomes operational, the date of that renewal;
    (b)in any other case, the date which falls nine months after the first day on which an approved scheme becomes operational.

Accordingly in this case the deposit should have been paid in to a scheme administrator within 30 working days of 21 December 2012 when the tenancy was renewed.

13. The short assured tenancy in this case was a "relevant tenancy" under Regulation 2 of the 2011 Regulations. A tenancy deposit is defined in section 120 of the Housing (Scotland) Act 2006 as:

" a sum of money held as security for—

(a)the performance of any of the occupant's obligations arising under or in connection with a tenancy or an occupancy arrangement, or

(b)the discharge of any of the occupant's liabilities which so arise".

The sum of £500 paid by the Applicants at the commencement of the tenancy was a deposit which should have been protected under Regulation 3 of the 2011 Regulations by the Respondent as the registered landlord and relevant person. It was however never protected throughout the whole of the tenancy from the date it should have been protected despite the Applicants contacting the Respondent in 2014 to enquire where their deposit was held.

14. 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.

15. 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.

16. 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.

17. The Tribunal considered the Respondent had been contacted by the Applicants in 2014 after the 2011 Regulations came into force but that he had taken no steps to pay the deposit into an Approved Scheme. The tenancy deposit was clearly unprotected from about January 2013 when the deposit should have been paid into an Approved Scheme. For Fife Properties, the Respondent's letting agents, to say that the deposit was paid into an Approved Scheme by previous letting agents at the commencement of the tenancy in 2007 does not make sense. It would appear the Respondent had letting agents to manage the tenancy, but nevertheless the obligation is on him as a landlord to ensure the 2011 Regulations were complied with. They were not as demonstrated by the lack of confirmation from the three scheme administrators that they had no record of the deposit. Even though the deposit was paid to the Applicants in full, the deposit was unprotected for nearly 12 years. The Tribunal consider this to be a substantial breach.

18. 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 three times the amount of the unprotected deposit.

Decision

19. The Tribunal accordingly made an Order for Payment by the Respondent to the Applicants of £1500.

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.

Shirley Evans

6 October 2024

Legal Chair **Date**