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 Regulations 9 and 10 Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations")

Chamber Ref: FTS/HPC/PR/24/3496

Property at 1/2 39 Whitehaugh Road, Glasgow, G53 7JQ ("the Property")

Parties:

Miss Karen Nicholson, 56 Inverarish Terrace, Isle of Raasay, Kyle, IV40 8NS ("the Applicant")

Mr James Dunlop, 89 Bangorshill Street, Thornliebank, Glasgow, G46 8LU ("the Respondent")

Tribunal Members:

Josephine Bonnar (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment of the sum of £1300 should be made in favour of the Applicant.

Background

1. The Applicant seeks an order in terms of Regulation 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"). A Council Tax Notice, bank statement and emails from the three approved deposit schemes were lodged with the application.

2. A copy of the application was served on the Respondent by Sheriff Officer. Both parties were notified that a case management discussion ("CMD") would take place by telephone conference call on 15 April 2025 at 2pm. The Respondent lodged a written response and documents in relation to the related case CV/24/3496.

3. The CMD took place at 2pm on 15 April 2025. The Applicant participated. The Respondent also participated, supported by his sister. The related case was also discussed.

Summary of discussion at CMD

4. The Legal Member noted that the Respondent had only lodged a response to the CV case, which is for a payment order in relation to the deposit. Mr Dunlop said that, although the covering letter from the Tribunal refers to both cases, he had not been served with a copy of the application for the PR case. The Legal Member explained that the PR case is an application for a payment order in relation to a failure to comply with the Tenancy Deposit Regulations. She also advised that the Tribunal is required to impose a sanction where a breach is established. However, all the paperwork submitted by the Applicant relates to both applications and based on the information provided by Mr Dunlop, it appeared that only the PR application form is missing from his bundle. The Respondent was advised that the CMD in relation to the PR case could be adjourned, so that a copy of the form G could be sent to him. He would then have the opportunity to consider the application before participating in a CMD. Mr Dunlop said that he did not want the CMD to be adjourned to another date and preferred to proceed with both cases.

5. Ms Nicolson confirmed that the Respondent had repaid part of her deposit, the sum of £295. However, she was seeking a payment order for the remainder of the deposit, under deduction of the sum of £20 for the broken catch on the dishwasher drawer. She conceded that Mr Dunlop was entitled to retain this because she had never reported the damage. She disputed his right to withhold the rest because it related to a leak from the bathroom. She had been unaware of the leak and was not responsible for it. The Respondent, as landlord, was responsible for the maintenance of the property. Mr Dunlop said that he had withheld £280 to cover the cost of the dishwasher repair (£20), the plumber (£230) and the replacement flooring he had to purchase for the bathroom (£30). He had not included the cost of the joiner's work. The plumber had replaced the toilet as it was cracked. After the Applicant had moved out, he lifted the lino and discovered the damage caused by the leak. There was black mould which suggested that the leak had been ongoing for a while. The base of the toilet was cracked, but this was only visible when the lino had been lifted. He understood why the Applicant had been unaware. He had not been in the property for 4 years, since she had moved in. He had not carried out any inspections.

6. Ms Nicolson said that she has reviewed the photographs provided by Mr Dunlop. However, she was completely unaware of the leak and the crack. She is now surprised that the downstairs neighbour had not been affected by the leak, but the neighbour did not report the matter to her. She said that as she was unaware of the leak, and not responsible for the damage, she is entitled to repayment of £260.

7. Mr Dunlop said that he thought that he was doing the right thing when he only returned part of the deposit. The CMD was adjourned for a short period to allow the Respondent the opportunity to discuss matters with his sister and consider his position. Following the adjournment, Mr Dunlop said that he did not want the case to be continued to an evidential hearing because he had nothing further to add to what had been said already. He accepted that the Applicant was unaware of the leak. The plumber said that the leak came from the crack in the base of the toilet, but he did not know how that had happened or if it was her fault.

8. Mr Dunlop told the Tribunal that he had not known about the tenancy deposit regulations. He has three rental properties and the deposits for the other two have not been lodged either. When asked why he was unaware of his obligations in terms of the regulations, he said that he has a full-time job as a postman and has 4 children and a stepchild. In response to a question about the absence of a tenancy agreement he stated that he thought that he had issued an agreement but that the Applicant had not signed it. However, it was four and a half years ago so he can't be sure. He said that he had purchased his first rental property 10 or 11 years ago and has been a landlord since that time.

9. Ms Nicholson told the Tribunal that the situation has been very stressful. When she moved out of the property she re-located to the other side of the country and was dealing with a difficult pregnancy. The dispute over the deposit added considerably to the stress she was experiencing. She said that she and the Respondent had got on fairly well, but he didn't visit much, and she had to purchase smoke and CO detectors as he failed to do so. Scottish Gas offered to fit a CO detector for £30 but he refused, stating that he would get someone to do it. However, he did not do so. Overall, he had not been a good landlord.

Findings in Fact

10. The Applicant is the former tenant of the property.

11. The Respondent is the owner and landlord of the property.

12. The tenancy started on 1 January 2020 and terminated on 28 June 2024.

13. Prior to the start of the tenancy the Applicant paid a deposit of £575.

14. The deposit was not lodged in an approved scheme.

15. The Respondent repaid part of the deposit, the sum of £295 to the Applicant. He refused to repay the remainder of the deposit to the Applicant.

16. The Applicant experienced stress and inconvenience as a result of the failure by the Respondent to lodge the deposit in an approved scheme as she was

unable to use a scheme adjudication process to deal with the dispute over the deposit.

17. The Respondent has been a landlord for 10 years and has two other rental properties.

Reasons for Decision

18. Regulation 3 of the 2011 Regulations states –

(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.

(1A) Paragraph (1) does not apply –

(a) Where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and
(b) The full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord,
Within 30 working days of the beginning of the tenancy.

19. Regulation 9 of the 2011 Regulations states that (i) a tenant who has paid a tenancy deposit may apply to the First-tier Tribunal for an order under Regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit. (2) An application under paragraph (1) must be made no later than 3 months after the tenancy has ended

20. Regulation 10 of the 2011 Regulations stipulates that if the Tribunal is satisfied that the landlord did not comply with a duty in terms of regulation 3, it "(**a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit."** The Tribunal therefore determines that an order must be made in favour of the Applicant.

21. From the documents lodged with the application, the submission lodged by the Respondent and the information provided by both parties at the CMD, the Tribunal is satisfied that the Applicant paid a deposit of £575 at the start of the tenancy, which was not lodged in an approved scheme. The Applicant has therefore established that the Respondent has failed to comply with the 2011 Regulations.

22. In terms of Regulation 10, an award **must** be made where there has been a failure by a landlord to comply with the Regulations. In assessing the award, the Tribunal had regard to the following factors: -

(a) The tenancy ended on 28 June 2024. The Respondent only repaid part of the deposit, the sum of £285, 4 weeks later. The remainder has been withheld. The Applicant has therefore suffered a financial loss.

(b) The Respondent is an experienced landlord of ten years with two other properties. Despite this, he claims to have been unaware of the Regulations and has not lodged any previous deposits in a scheme. He also failed to fulfil other landlord obligations – inspecting the property to ensure it meets the repairing standard, providing smoke and carbon monoxide detectors and providing the tenant with a tenancy agreement.

(c) The Applicant has been put to inconvenience and has experienced stress as a result of the failure. She has had to make an application to the Tribunal to recover the remainder of the deposit and was deprived of the opportunity to have the matter dealt with administratively by a scheme adjudication process.

23. In the case of Rollett v Mackie (2019 UT 45), the Upper Tribunal refused the appeal by the Applicant who argued that the maximum penalty ought to have been imposed. Sheriff Ross commented that the "level of penalty requires to reflect the level of culpability" and that "the finding that the breach was not intentional…tends to lessen culpability" (13). He goes on to say, "Cases at the most serious end of the scale might involve repeated breaches against a number of tenants, fraudulent intention, deliberate or reckless failure to observe responsibilities, denial of fault, very high financial sums involved, actual losses caused to the tenant."

24. In the present case, some of the aggravating factors listed by Sheriff Ross are present. The breach is not a one-off incident, the result of oversight. The Respondent has been letting out properties for over ten years and has never lodged a deposit in a scheme because he claims to have been unaware of the existence of the regulations. There was no evidence to suggest that his claim was untrue. However, it demonstrates a somewhat casual attitude to his landlord obligations, a "reckless failure to observe his obligations". This is also evidenced by his other failures, in relation to the provision of a written tenancy agreement and smoke and carbon monoxide detectors. The Applicant stated in her application that no tenancy had been provided. The Respondent said that he thought that he had issued an agreement, but he was not certain and did not provide a copy of it. The Tribunal is not persuaded that it exists. It is highly unsatisfactory that an experienced landlord who has been letting out properties for 10 years should be unaware of regulations which have been in force for 13 years. His reference to having a busy life is not a reasonable explanation or excuse. The Applicant has also suffered financial loss, although the sum in question is modest, as well as stress and inconvenience. The Tribunal is satisfied that the breach is at the higher (although not the highest) end of the scale and determines that the sum of £1300 should be awarded to the Applicant.

Decision

25. The Tribunal determines that an order for payment of the sum of £1300 should be made in favour of the Applicant.

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.

J Bonnar

Legal Member **Date: 23 April 2025**