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 Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Procedure Regulations") and The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations")

Chamber Ref: FTS/HPC/PR/24/4453

Re: Property at 170B Pittencrieff Street, Dunfermline, KY12 8AW ("the Property")

Parties:

Mrs Ishi Saxena, 38F Campbell Street, Dunfermline, KY12 0QJ ("the Applicant")

Ms Usha Gronbach, 1 Eastfield Road, Fauldhouse, EH47 9LE ("the Respondent")

Tribunal Members:

Nicola Weir (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment in the sum of £300 should be made by the Respondent to the Applicant.

Background

1. By application received on 21 September 2024, the Applicant applied to the Tribunal for an order for payment against the Respondent in respect of failure to carry out her duties as landlord in relation to a tenancy deposit. The failure alleged was a failure to lodge the whole deposit within an approved scheme within the required time limit (30 working days) in terms of the 2011 Regulations. Supporting documentation was lodged in respect of the application, including a copy of the tenancy agreement, proof of payment of the deposit of £795 by the Applicant, a copy of the Notice to Leave served on

the Respondent and confirmation from Safe Deposits Scotland ("SDS") regarding the deposit and the date it was lodged in the scheme.

2. Following initial procedure, on 14 October 2024, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.

3. On 19 February 2025, a copy of the application papers and details of the Case Management Discussion ("CMD") to take place were served on the Respondent by Sheriff Officer. Any written representations by the Respondent were to be lodged with the Tribunal by a specified date. No representations were lodged by the Respondent prior to the CMD.

Case Management Discussion

4. The CMD took place by telephone conference call on 3 April 2025 at 2pm. The Applicant, Mrs Ishi Saxena and the Respondent, Ms Usha Gronbach, were both in attendance.

5. After introductions and introductory remarks by the Legal Member, Ms Gronbach was asked to confirm her position in respect of the application. She admitted the alleged breach of the 2011 Regulations, but explained her own position and some mitigating factors. The Legal Member noted the pertinent facts, which were admitted, that the tenancy had started on 1 May 2024 and had been of relatively short duration, ending around 10 August 2024; that the Applicant had paid the tenancy deposit of £795 to the Respondent on 30 April 2024, just in advance of the tenancy commencing; and that the deposit had been lodged with SDS on 4 July 2024. The Legal Member explained that the duty of the landlord is to lodge the deposit in a scheme within 30 working days of the start date of the tenancy and that, according to her calculations (leaving out of account weekend days and bank holidays, as per the 2011 Regulations), the deposit in this case should therefore have been lodged by 13 June 2024. Thus the period of breach was around 3 weeks, from 13 June 2024 until 4 July 2024, the date it was lodged. This calculation was accepted by both parties.

6. Ms Gronbach asked that it be taken into account that she did lodge the full deposit with SDS during the tenancy and that the full deposit was returned to the Applicant at the end of the tenancy. She explained that the reasons for the delays in her lodging the deposit in the scheme were due to personal problems she was experiencing around that time, but also due to difficulties experienced with the Applicant whom she stated was quite a demanding tenant and requested a lot of things from her over a short period of time, some of which she felt the Applicant should be sorting out herself. Ms Gronbach stated that these difficulties had distracted her and took up a lot of time and she was finding it difficult to manage the tenancy with all the personal problems she was also experiencing around then, which impacted on her mental health. She referred to a recent relationship breakdown, moving house

and being involved in costly court proceedings relating to her family circumstances. She referred to the short period of the breach and said it had just been an oversight.

7. Mrs Saxena stated in response that she appreciated Ms Gronbach's honesty but stated that she had specifically asked about the tenancy deposit and details regarding the scheme several times during the tenancy and had not received a response. She had eventually had to call SDS herself to find out the position. She confirmed that she had raised legitimate concerns regarding repair and maintenance issues with Ms Gronbach which were not dealt with either. There was essentially a three-month delay whilst she awaited a response and she had ended up seeking advice from Fife Council. She had university exams going on around that time so was also in a stressful situation and just wanted peace of mind regarding the property and the tenancy deposit. This was made worse by Ms Gronbach serving a Notice to Leave, stating that she intended to sell the property, so Mrs Saxena had then had to find somewhere else to live in a short period of time. She stated that Ms Gronbach had breached her responsibilities as a landlord and feels that there should be a sanction imposed.

8. The Legal Member stated that it was clear that there had been a breach of the 2011 Regulations, albeit a fairly minor one, and that it would be her intention to make a finding in this regard and to impose a financial sanction, in terms of the Regulations, which she stated would likely, in the circumstances, be on the lower end of the scale. The Legal Member requested comments from both parties on the matter of the sanction.

9. Ms Gronbach reiterated that she had honoured return of the deposit in full and had put it into a scheme during what was a short tenancy period. She was going through a traumatic personal situation which has already cost her £18,000 and she had found it difficult to deal with Mrs Saxena as a tenant. She had, however, apologised to Mrs Saxena in person for her oversights. She explained that she was relying on an agent/family member who was also involved in her business, Home Investment Solutions, and initially thought that the deposit would have been put into the scheme by this person on her behalf. Ms Gronbach confirmed that she had been a landlord for 18 years and lets out twelve properties. She is an experienced landlord and has not had any other difficulties or previous breaches in relation to tenancy deposits. She reiterated that this was just an oversight, the deposit was only three weeks late being lodged and that Mrs Saxena was not out-of-pocket in any way as the full deposit had been repaid to her. Ms Gronbach considers that there should be a minimal or no financial sanction imposed in the circumstances.

10. Mrs Saxena confirmed that she was seeking the maximum sanction of three times the amount of the tenancy deposit as Ms Gronbach had admitted this breach and Mrs Saxena considered that she had experienced multiple other issues with Ms Gronbach as a landlord. She had been undergoing a stressful time too. She had previous bad experiences with landlords and thought, given that Ms Gronbach had stated at the outset that she was looking for long-term

tenants, she had not expected to have to vacate the property after just three months there. As to the tenancy deposit situation, this caused her anxiety throughout the tenancy and added to her stress.

11. Following the discussions, the Legal Member indicated that she was satisfied that there was a clear, albeit fairly minimal, breach of the 2011 Regulations, which was admitted by the Respondent, and that, in terms of those Regulations, a payment order would accordingly be made in favour of the Applicant today. She indicated that it would be on the lesser end of the scale, given the circumstances of the breach, but that she would fully consider the representations made by both parties as to the appropriate sanction and issue a written decision shortly, specifying the amount of the payment order and explaining the reasons for same.

12. Ms Gronbach asked about how such an order would work and what she could do if she has no money to pay it (given her current personal circumstances). The Legal Member indicated that the order would require her to pay the Applicant a specific sum and that Ms Gronbach would thereafter require to seek her own advice regarding the matter. Parties were thanked for their attendance and the CMD concluded.

Findings in Fact

1. The Respondent is the landlord of the Property.

2. The Applicant was the tenant of the Property by virtue of a Private Residential Tenancy commencing on 1 May 2024, which ended on or around 10 August 2024.

3. The Applicant paid to the Respondent a tenancy deposit of £795 at the outset of the tenancy, in accordance with the terms of the tenancy.

4. The Respondent lodged the deposit in a tenancy deposit scheme with SDS on 4 July 2024, around three weeks late in terms of the 2011 Regulations.

5. The Applicant sought confirmation from the Respondent several times during the tenancy regarding the tenancy deposit being lodged in a scheme but did not receive any response.

6. The Applicant received the full tenancy deposit back at the end of the tenancy.

7. The Respondent admits the breach of the 2011 Regulations.

Reasons for Decision

1. The application was in order and had been submitted timeously to the Tribunal in terms of Regulation 9(2) of the 2011 Regulations [as amended to bring these matters within the jurisdiction of the Tribunal], the relevant sections of which are as follows:-

*"**9.**—(1) A tenant who has paid a tenancy deposit may apply to the sheriff 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 by summary application and must be made no later than 3 months after the tenancy has ended.

***10.** If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—*

(a)must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(b)may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to—

(i)pay the tenancy deposit to an approved scheme; or

(ii)provide the tenant with the information required under regulation 42."

Regulation 3 [duties] referred to above, is as follows:-

*"**3.**—(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.

(3) A "relevant tenancy" for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

(a)in respect of which the landlord is a relevant person; and

(b)by virtue of which a house is occupied by an unconnected person,

unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions "relevant person" and "unconnected person" have the meanings conferred by section 83(8) of the 2004 Act."

The Legal Member was satisfied from the documentation before her and the oral representations made at the CMD that the Respondent was under the duties outlined in Regulation 3 above and had failed to ensure that the deposit paid by the Applicant was paid into an approved tenancy deposit scheme within 30 working days of the start of the tenancy, contrary to Regulation 3 of the 2011 Regulations. This was admitted by the Respondent, as were the pertinent facts. The Legal Member was therefore satisfied that the application did not require to be continued to an Evidential Hearing and that, in terms of Regulation 10 above that a sanction must be imposed on the Respondent in respect of this breach of the 2011 Regulations.

2. In determining the appropriate amount of the sanction to be imposed on the Respondent for payment to the Applicant, the Legal Member considered carefully the background circumstances and the information received from both parties on the matter. The Legal Member considered that the amount of the sanction should reflect the gravity of the breach. The Respondent had requested leniency. The Applicant considered that the maximum sanction should be payable. As the deposit here was £795, in terms of Regulation 10(a) above, the maximum possible sanction is £2,385. There is no minimum sanction stipulated in the 2011 Regulations.

3. The Legal Member considered the short duration of the tenancy of just over three months and that the deposit had been placed in the scheme around three weeks late. In the circumstances, the Legal Member considered this a relatively minor breach of the 2011 Regulations. The Applicant clearly had some other grievances regarding the Respondent's conduct in relation to the tenancy and being served with a Notice to Leave so soon after the tenancy commenced. However, as had been explained during the CMD, the Legal Member did not consider that she could take these other issues into account in determining the appropriate sanction, other than the Respondent's failure to respond to the Applicant's queries regarding the tenancy deposit. As the deposit had been placed in a scheme by the Respondent and was returned in full to the Applicant at the end of the tenancy, the Legal Member accepted that there had not been any substantial prejudice nor financial implications to the Applicant caused by the Respondent's breach of the 2011 Regulations. However, the Legal Member did have some sympathy for the Applicant's position that she had been inconvenienced and caused some unnecessary stress and anxiety during the tenancy as a consequence of the Respondent's admitted failure to respond to her repeated queries regarding the lodging of the deposit in a scheme. The Legal Member also had regard to the fact that the Respondent was a very experienced landlord, having been a landlord for 18 years and currently letting out around 12 properties. Had the Respondent not provided the mitigating information regarding her personal and family circumstances at the relevant time and how this had impacted on her, the Legal Member may have imposed a higher sanction, given that she is in business as an experienced landlord and had failed to respond to the Applicant's enquiries regarding the matter during the tenancy. However, it appeared to the Legal Member, from the chronology of events, that, having

realised that the deposit had not been lodged as she had originally thought, the Respondent had taken the appropriate steps to lodge it with a scheme, albeit late. Weighing all of these factors, the Legal Member determined that £300 was the appropriate amount of the sanction to be paid by the Respondent to 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.

N Weir

_____ **3 April 2025**

Legal Member/Chair **Date**