Housing and Property Chamber
First-tier Tribunal for Scotland

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/24/1748

Re: Property at 40 Maxwell Street, Girvan, KA26 9EJ ("the Property")
Parties:

Ms Cheryl Cooper, 4 Cuddieston, Girvan, KA26 0EN ("the Applicant")

Mr Alan Harkness, 17 Vicarton Street, Girvan, KA26 9HF ("the Respondent")

Tribunal Members:

Valerie Bremner (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent has failed to comply with the duties under Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (" the 2011 Regulations") and ordered the Respondent to pay the sum of £900.00 (Nine Hundred Pounds Only) to the Applicant.

Background

1. This application for sanction on a landlord in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 was first lodged with the Tribunal on 17th April 2024 and accepted by the Tribunal on 25th April 2024.The application was lodged along with a related application FTS/HPC/CV/1750 seeking payment of a deposit paid by the Applicant in terms of the tenancy. A case management discussion was initially fixed for both applications for 24th July 2024 at 2pm.

Case Management Discussions

2. The initial case management discussion was attended by the Applicant and her representative Mr Tierney of Ayr Housing Aid Centre. The Respondent did not attend the case management discussion but was represented by Mrs Michelle Edens.

3. The Tribunal had sight of the application, a tenancy agreement, and confirmation from the tenancy deposit schemes that the deposit had not been lodged with them, together with a notice of removal date from the property.

4. The parties had entered into a short assured tenancy at the property with effect from 23rd June 2017. This appeared to have continued on a six monthly basis by tacit relocation and it ended early in 2024 after the Respondent obtained an order to evict the Applicant. The Applicant had paid a deposit of £400 around the start of the tenancy. Mrs Edens for the Respondent indicated that the Respondent accepted that the deposit of £400 had not been protected at all during the tenancy and that the Respondent had kept this money in the bank during the tenancy. The same had applied to a previous tenant who had paid a deposit. Mrs Edens also accepted that the Respondent had not given the required information to the Applicant in terms of Regulation 42 of the 2011 Regulations, once the Legal member set out what that information was. The Tribunal Legal Member explained that the Tribunal could award a maximum sanction of £1200, three times the deposit, in terms of the Regulations.

5. In terms of sanction Mr Tierney for the Applicant indicated that he was asking the Tribunal to consider in particular the length of time that the deposit had been outstanding given that the parties had entered into a tenancy agreement and the deposit had been paid around 23rd June 2017. He indicated that the failure to protect a deposit prevented the Applicant from using the dispute resolution services which the tenancy deposit schemes provide and that was exactly what had happened here given that there was still a dispute over the deposit. Mr Tierney had asked for the maximum sanction in his application but accepted that the Tribunal might wish to give some credit to the Respondent for accepting the breach of duty at the case management discussion.

6. For the Respondent Mrs Edens indicated that the Respondent lets out only one property which is the property in this application. She said that he did not know about the requirement to protect the deposit and give information to the Applicant. He was from a farming background and now that the property was vacant, he was hoping that he might be able to move into it when the work required was done. She said that he would have returned the deposit to the Applicant if there had been no requirement to carry out repairs and work when the tenancy ended. The Tribunal Legal Member queried how it could be that the landlord did not know about the Regulations when the Tribunal had been told that he had leased out the property for some years and there had been publicity about landlords' new duties around the time when the Regulations came into force. Mrs Edens said that she did not know why that was the Respondent's position as she was giving the information she had, and she would require to speak to him.

7. The Tribunal considered that the reason why the deposit was not protected and the required information had not been given to the Applicant was relevant to the consideration of the appropriate sanction to be imposed and that more information was required in order to determine the appropriate level of sanction in this application. The case management discussion was continued to a later date to allow the

Respondent to provide further information as to why the breach of the duties had occurred.

8. The Tribunal received a typed letter from the Respondent dated 31.8.24 setting out his position as to why the breach of duty had occurred. In this letter he said that he had only leased the property on one occasion before the Applicant had taken on the tenancy. The Applicant had been known to his daughter, and he said that she had been desperate for somewhere to stay, and he had allowed her to put her furniture in the property before the tenancy started. The deposit had been paid into the Respondent's bank, and he said he would have returned it to her if the property had been left in the condition that it had been given to her. The Respondent described himself as " not very literate" and said that he had relied on others to help with this. He had been unaware of the deposit schemes, had no background in these matters and had the "minimum knowledge with regard to regulations". He apologised for the oversight.

9. At the Case management discussion on 12th February 2025 the Respondent's representative referred to this letter and indicated that the property was no longer rented out and the Respondent was living in it. He was not going to be a landlord again. He had his own health issues and Mrs Edens had been the point of contact for the Applicant throughout the tenancy.

10. The Applicant's representative referred to his previous submissions regarding the level of sanction.

11. The Tribunal was aware that the issue of the return of the deposit was not resolved and the application for the return of the deposit was opposed, with a counterclaim having been lodged and that this matter was still to proceed to determination after a hearing.

12. The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings In Fact

13. The parties entered into a short assured tenancy in respect of the property with effect from around 23rd June 2017 and this continued by way of tacit relocation.

14. The tenancy was a relevant tenancy in terms of the Tenancy Deposit Schemes(Scotland) Regulations 2011.

15. The Applicant was required to leave the property no later than 15th March 2024 after the granting of an eviction order.

16. The Applicant paid a deposit to the Respondent of £400 to the Respondent around the start of the tenancy in 2017.

17. The Respondent did not pay the deposit into an approved tenancy deposit scheme at any time during the tenancy.

18. The Respondent did not give to the Applicant at any time during the tenancy the information required to be given in terms of Regulation 42 of the 2011 Regulations.

19. The Respondent retained the deposit in his own bank account during the tenancy.

20. There is a dispute between parties as to whether the deposit should have been returned or not at the end of the tenancy and this is yet to be determined by the Tribunal.

21. The Respondent had only one rental property, the property referred to in this application and had rented it out once before the Applicant became a tenant.

22. The Respondent considers himself to be not very literate and had help to deal with matters around the tenancy at the property.

23. The Respondent had no previous background in rental and had no knowledge of the duties required in the 2011 Regulations.

24. The Respondent now lives at the property and is no longer renting out any property.

The Relevant Law

25. Rule 3(1) of the 2011 Regulations provides that " 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

26. A tenancy deposit is defined in the 2011 Regulations as having the meaning conferred by section 120(1) of the Housing (Scotland) Act 2006 (" the 2006 Act) which states:-

" A tenancy deposit is 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".

Reasons for Decision

27. The tribunal considered what the appropriate sanction would be in the circumstances based on all of the evidence before it. When considering the appropriate level of sanction to be made in the circumstances, the tribunal considered the need to proceed in a manner which is fair, proportionate and just having regard to the seriousness of the breach (Jensen v Fappiano 2015 GWD 4-89).

28. The tribunal noted the view expressed by Sheriff Ross in Rollet v Mackie [2019 UT 45] that the level of penalty should reflect the level of culpability involved. The tribunal considered whether there were aggravating factors which might result in an award at

the most serious end of the scale as noted by Sheriff Ross in Fappiano. There was no evidence in this application of any deliberate intent to fail to protect the deposit or give the Applicant the required information. However, the Respondent appears to have had no knowledge at all over a long period of what was required of him. The Tribunal considered that ignorance of the law cannot be an excuse in this situation and where a landlord feels unable to deal with matters himself it is important that those who he chooses to assist him know what is required by law where a deposit is taken in a tenancy such as this one. The tenancy carried on here for almost 7 years with the deposit unprotected and had it been protected in one of the approved deposit scheme providers then the Applicant could have availed herself of the Scheme mediation service regarding its return. The failure by the Respondent to protect the deposit denied her this opportunity and the deposit is still a matter of dispute between parties. The Tribunal considered the circumstances in this application to amount to a significant breach due to the complete failure of the landlord to appreciate what was required of him or those he instructed to help him, over such a long period. That said the Tribunal took into account that this was not a deliberate breach, and it had been accepted by the Respondent.

29. Taking all of these considerations into account the tribunal determined although an order at the maximum level was not appropriate, this was a significant breach by a landlord who had no knowledge of what he was required to do over a lengthy period and the appropriate sanction was one of £900, a sum in excess of twice the deposit paid.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent has failed to comply with the duties under Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (" the 2011 Regulations") and ordered the Respondent to pay the sum of £900.00 (Nine Hundred Pounds Only) 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.

Valerie Bremner

Legal Member **12.2.25**
Date