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 and Regulations 3 and 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/21/2670

Re: Property at 6 Coats Drive, Luncarty, Perth, PH1 3FD ("the Property")

Parties:

Mr Michael Morgan, 21 Llwyncelyn Close, Capel Hendre, Ammanford, SA18 3SS ("the Applicant")

Ms Toni Geddes, 1 Burnside, Kinclaven Crescent, Murthly, Perthshire, PH1 4BF ("the Respondent")

Tribunal Members:

George Clark (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be determined without a Hearing, that the Respondent had failed to comply with the duty imposed on her by Regulation 3(1)(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and made an Order for Payment by the Respondent to the Applicant of the sum of £1,700.

Background

1. By application, received by the Tribunal on 25 October 2021, the Applicant sought an Order for Payment in respect of the Respondent's failure to comply with the requirement to lodge a tenancy deposit in an approved Tenancy Deposit Scheme, as required by The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations").

2. The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties commencing on 30 September 2016 and if not terminated on 31 March 2017, continuing on a monthly basis thereafter. The rent payable was £850 per month and there was a deposit of £850. The Applicant also provided documentation establishing that the tenancy ended on 25 September 2021; a letter from Belvoir! letting agents, Perth stating that the rent and deposit had been passed to the Respondent, as they had only acted in setting up the tenancy on a tenant find and move-in basis; emails from SafeDeposits Scotland, Letting Protection Service Scotland and mydeposits Scotland, dated respectively 28 September, 29 September and 8 October 2021, all confirming that the tenancy deposit had not been lodged with them; and screenshots of text messages between the Parties, in one of which the Respondent stated "I had to register it. It's been applied for in full."

3. On 4 November 2021, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 25 November 2021.

4. On 24 November 2021, the Tribunal received written representations from Kippen Campbell LLP, solicitors, Perth, on behalf of the Respondent. They stated that the Respondent accepted that she had failed to lodge the deposit but that the failure was an oversight for which she apologised. She asked the Tribunal to take into account mitigating circumstances. 2016 had been the start of a very challenging period for her, as she was heavily involved in the personal care of her father, who was in the last stages of Alzheimer's, she was working antisocial hours whilst caring for her young family and, as a result, she was diagnosed with depression and anxiety, for which she had sought help. She had only discovered her oversight when the Applicant requested a copy of the Tenancy Deposit Scheme reference at the end of the tenancy. At that time, she had found the money in an envelope beside her copy of the lease. It had been an honest oversight arising from her state of mind and her pace of life at the time. She considered herself a genuine and committed landlord. She referred to the "threatening nature" of messages she had received from the Applicant in the days following the termination of the lease and stated that, as a result, she returned the deposit in full on 27 September 2021. The Applicant had failed to cancel his standing order for the rent, which had resulted in the sum of £698 being paid to the Respondent on 1 October 2021. The Applicant had requested its return on the following day, and it was refunded three days later, under deduction of an agreed payment in respect of a broken light fitting. The Property had been re-let and the deposit for the new tenancy had been lodged one day after the tenancy commenced.

5. The Respondent asked the Tribunal to take into account the mitigating circumstances and suggested that the penalty to be ordered by the Tribunal should be minimal.

6. The Respondent's solicitors included with the written representations screenshots of text correspondence between the Parties, commencing with the Applicant's intimation that he and his family would be moving to Wales, where he had taken up a job offer. On 11 August 2021 the Respondent wrote that she

could pay the deposit into the Applicant's account after the final inspection. They also discussed an issue with a wasp's nest and the possibility of a colleague of the Applicant taking on a tenancy of the Property when the Applicant and his family vacated. On 6 September, the Applicant asked the Respondent for the code for the deposit scheme, a request that he repeated on 19 September. In text messages on that day, the Respondent replied by asking if there was a potential problem that she needed to be aware of regarding the deposit, as he was asking for this information. The Applicant replied that there was no problem, and he needed the information because when the Parties agreed it, he could then log on to the deposit scheme website and it would be released to him. The Respondent then said "It's all in hand I have applied already for it in full as I presume from what I see all is well". On 26 September, the Applicant asked the Respondent if she had transferred the deposit yet. She replied that she needed to get prices for a replacement lampshade an Ikea rugs. The Applicant stated that this could be contested through the tenancy deposit scheme company, as he did not agree with the proposed deductions. A small number of additional issues relating to the Property were also raised in the Respondent's text messages of 26 September and the correspondence provided by the Respondent ended with the Applicant telling the Respondent that she was ignoring the fact that she did not lodge the deposit properly and that, as a result, there was not a third party to address their disagreements. He was sorry that it had come to this point, as they had really loved the house and felt they had treated it as their home. He was prepared to pay for the lampshade, which he had accidentally broken, but not for the rugs. The Respondent then referred to the upset and stress that the Applicant's messages had caused her that day and said that she too was disappointed that it had come to this, but they would just have to agree to disagree, and she would make arrangements with her bank to repay the deposit in full on the following day. On 27 September, the Respondent confirmed that she had repaid the deposit and thanked the Applicant for the prosecco they had left in the fridge for her.

7. On 2 October 2021, the Applicant's partner told the Respondent in a text message that they had forgotten to cancel their standing order for the rent and asked the Respondent to return the £698 that they had accidentally paid. The Respondent said that she would organise it the following day as she did not have online banking for that account. On 4 October, the Applicant's partner asked the Respondent if she had transferred the money yet and she responded on 5 October that she would be doing it that afternoon. She had been unable to find a matching shade for the broken light fitting and asked if she could deduct £30 for a new fitting. This was agreed.

Case Management Discussion

8. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 14 December 2021. The Applicant was present, and the Respondent was represented by Mrs Sally McCartney of Kippen Campbell LLP, solicitors, Perth.

9. The Applicant told the Tribunal that they had not wanted things to get to this stage, causing stress to themselves and to the Respondent. In her written representations, the Respondent had referred to the deposit money being in an envelope beside the lease, but the Applicant questioned this, as it would have been transferred to her by the letting agents and would not have been paid to her in cash, as they had not themselves paid it in cash. She had also, on 4 and 19 September, stated that the money was in the bank. The Applicant and his family had treated the Property as if it were their own place. The Respondent had raised issues, but these had simply been wear and tear, apart from the accidental damage to the light fitting. The Applicant denied that they had sent threatening messages. They had even helped the Respondent to find a new tenant for the Property.

10. Mrs McCartney, for the Respondent, told the Tribunal that, as regards the money in an envelope, she had to take her client at face value. The Respondent had only discovered her oversight when she went to return it to the Applicant and had then returned the deposit in full. She stressed that the Respondent understood the seriousness of her failure but asked the Tribunal to take into account the significant mitigating factors set out in the written representations.

Reasons for Decision

11. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

12. Under Regulation 3(1)(a) of the 2011 Regulations, a landlord must within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme and provide the tenant with the information required under Regulation 42. Under Regulation 10 of the 2011 Regulations, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal must order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit.

13. The Tribunal noted that the Respondent accepted that she had failed to lodge the deposit in an approved tenancy deposit scheme, so the only matter for the Tribunal to determine was the amount that the Respondent should be ordered to pay to the Applicant, the maximum figure being £2,550, being three times the amount of the deposit.

14. The Tribunal noted the mitigating factors which the Respondent wished to be taken into account and recognised that, at what was a stressful time for her, she might have overlooked the requirement to lodge the deposit in an approved scheme. She had refunded the deposit in full, but there had clearly been a

disagreement between the Parties as to whether the Respondent should be allowed to deduct the costs of certain items from the money due to the Applicant. This had affected a hitherto good relationship and, had the deposit been secured in an approved scheme, the resolution would have been in the hands of an independent adjudicator. That is one of the the primary functions of the Tenancy Deposits Schemes. In the present case, although the deposit was repaid in full, the disagreement had resulted in a sum being deducted from the refund by the Respondent of an overpayment of rent by the Applicant.

15. The Tribunal did not regard the tone of any of the text messages sent by the Applicant as threatening. He was merely trying to obtain the tenancy deposit reference, so that he could apply for repayment. This was information that the Respondent was legally obliged to provide under Regulation 42 of the 2011 Regulations.

16. The Tribunal noted the claim of the Respondent that she had only discovered her oversight when she found the money in an envelope beside the lease. The Tribunal did not accept that argument. The letter from the letting agents indicated that the initial rent and the deposit had been passed to the landlord. The Tribunal accepted the statement of the Applicant that they had not paid the rent and deposit in cash and, in the absence of evidence such as a letter from the letting agents enclosing £1,700 in cash, the Tribunal was unable to accept the Respondent's claim. It would have been normal commercial practice to remit sums by bank transfer, particularly when they had been received by the letting agents by that means. The Respondent had, in any event, told the Applicant on 16 September 2021 that she had already "applied for it in full". This implied that she had made an application to a tenancy deposit scheme, which clearly she could not have done. The Tribunal did not find that she had wilfully retained the deposit moneys at the commencement of the tenancy, but she had compounded a possible oversight by making a misleading statement, although she had then refunded the deposit in full.

17. The Tribunal noted that the Applicant's deposit was at risk for the entire duration of the tenancy, a period of 5 years. In addition, the Applicant had been caused stress and inconvenience by the Respondent, having repaid the deposit, subsequently seeking to make deductions from the rent that the Applicant had accidentally overpaid.

18. Having taken into account all the circumstance of this particular case and the evidence, written and oral, presented to it, the Tribunal decided that an appropriate sum to order the Respondent to pay to the Applicant under Regulation 10 of the 2011 Regulations was £1,700.

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.

George Clark

Legal Member/Chair

14 December 2021
Date