

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 Regulation 9 of the Tenancy Deposit
Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/18/3383

Re: Property at 602 Crow Road, Broomhill, Glasgow, G13 1NP ("the Property")

Parties:

Ms Louise Galloway, 8 Harefield Drive, Glasgow, G14 9AW ("the Applicant")

**Mr Fabieno Capaldi, 6 Clathic Avenue, Bearsden, Glasgow, G61 2HF ("the
Respondent")**

Tribunal Members:

Rory Cowan (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that: (1) the Respondent had failed to comply with regulation 3(1)(a) and (b) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (the Regulations); and (2) that the sum of £500 was an appropriate penalty; THEREFORE the Tribunal orders that the Respondent make payment to the Applicant in the sum of £500.

BACKGROUND

The application was dated and received on 11 December 2018 (the Application). Following receipt of the Application, a Hearing was fixed for 12 February 2019. The Application seeks an order under Regulation 9 of the Regulations and alleges that the Respondent failed to comply with his duties under Regulation 3 of the Regulations. In that the security deposit totalling £850 had not been paid into an approved tenancy deposit scheme and certain prescribed information had not been given to her all within 30 working days of the start date of the tenancy. Neither the Applicant nor the Respondent were personally present, but the Applicant was represented by a Mr Dillon (Lay Representative) and the Respondent was represented by a Mrs Elena Capaldi (the Respondent's mother and also his attorney).

Representative) and the Respondent was represented by a Mrs Elena Capaldi (the Respondent's mother and also his attorney).

FINDINGS IN FACT

The Tribunal makes the following findings in fact: -

- 1) That the Respondent is the Heritable Proprietor of 602 Crow Road, Broomhill, Glasgow G13 1NP (the Property).
- 2) That the Applicant was the tenant of the Respondent under and in terms of the tenancy agreement dated 20 July 2018 that commenced on the same date.
- 3) That in terms of the tenancy the security deposit payable under clause 11 was £850.
- 4) That the Applicant paid the deposit in full to the Respondent's then agents by 20 July 2018.
- 5) That the deposit was not paid into an approved tenancy deposit scheme and no information as prescribed was issued by or on behalf of the Respondent to the Applicant.
- 6) That the Respondent's mother Mrs Capaldi received the deposit and paid it on 13 August 2018 into her bank account.
- 7) That the tenancy ended on 4 December 2018 after the Applicant gave notice to leave.
- 8) That the deposit was returned in full to the Applicant by 7 December 2018 by bank transfer.
- 9) That the first suggestion of any breach of the Regulations made to the Respondent was in an email from Mr Dillon to Mrs Capaldi dated 15 January 2019.
- 10) That Mrs Capaldi looks after the Property on behalf of the Respondent under a Power of Attorney dated 31 July 2017.
- 11) That Mrs Capaldi does not look after any other properties.
- 12) That Mrs Capaldi was unaware of a landlord's obligations under the Regulations.

FINDINGS IN FACT AND LAW

The Tribunal makes the following findings in fact and law:-

- 1) The Respondent failed to comply with regulation 3(1)(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011; and
- 2) The Respondent failed to comply with regulation 3(1)(b) of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

REASONS FOR DECISION

1. In advance of the Hearing both parties produced various documents to the Tribunal. No issue was taken with the provenance of any of the documents lodged.
2. There was no dispute from Mrs Capaldi that she had received the deposit in full and that it had not been paid into an approved tenancy deposit scheme. She further acknowledged that she had not issued the prescribed information required by regulation 42 of the Regulations. She conceded that, as a result there had been a breach of the Respondent's duties under regulation 3(1)(a) and (b) of the Regulations.
3. In terms of the Regulations, it having been conceded that there was a failure to comply with the requirements of regulation 3, the Tribunal is required to proceed to order the Respondent to pay a sum, not exceeding three times the deposit to the Applicant.
4. The appropriate approach to consider the level of a sanction was considered by Sheriff Welsh in *Jenson v Fappiano* [2015] 1 WLUK 625. In short, the Tribunals' discretion as to the level of a sanction is unfettered. The wording of regulation 10(a) is permissive only and does not mean in every case where there is a finding or an admission of breach by a landlord of regulation 3 of the Regulations that the starting point is an award of 3 times the level of the deposit. As such any sanction should be "fair proportionate and just" having regard to the seriousness of the non-compliance.
5. In this case the deposit was never paid into a scheme and remained unprotected for a period of 108 days. That said, the deposit was returned in full within 3 days of the end of the tenancy concerned and there was no attempt to make any deductions or hold onto the deposit for any protracted period. Further, neither the Applicant or the Respondent appear to have been initially aware of the requirement to lodge a deposit with a an approved scheme. Mr Dillon suggested that the Applicant became aware of the duty after she had given notice to leave. Whilst it is accepted that the duty is upon the Respondent to lodge the deposit, no attempt was made by the Applicant to raise this with the Respondent until after the tenancy had concluded. Mrs Capaldi indicated that she was not aware of the duty until after she had received Mr Dillon's email of 15 January 2019. Crucially, it was not the raising of this issue that led to the quick return of the full deposit to the Applicant at the end of the tenancy.
6. Mr Dillon did suggest that the Applicant was "anxious" about the return of her deposit for an unspecified period up to the end of the tenancy and for the 3

days after 4 December 2018 when the deposit was received by her, although he did concede that anxiety was unjustified in the circumstances.

7. Mrs Capaldi acknowledged her mistake and ignorance of the law. Whilst not an excuse or a defence, the Tribunal is entitled to consider her lack of knowledge as part of the circumstances of the case. There is no suggestion of wilful default albeit there was a suggestion that there may have been similar default in at least a previous tenancy.
8. It was noted that the Respondent was not as yet registered as a landlord. Mrs Capaldi indicated that she had applied for registration and that she had been advised by former letting agents of the requirement to register. Her position was that she had simply forgotten to register before and presumably had not understood the seriousness of not being registered. Mrs Capaldi produced a receipt issued to her for the fee paid along with an application for registration dated 29 January 2019. As at the date of the Hearing no registration number had been issued. It was explained to Mrs Capaldi that, as this was a case involving "relevant proceeding" in terms of section 72(3) of the Private Housing (Tenancies) (Scotland) Act, in terms of section 72(1) of the Private Housing (Tenancies) (Scotland) Act 2016, the Tribunal had a duty to report this issue to the relevant local authority.
9. The Tribunal based on the circumstances placed before it took the view that, whilst the Respondent's default could be categorised as serious it was not at the most serious end of the scale and had regard to the mitigating circumstances advanced by Mrs Capaldi. Accordingly, the tribunal took the view that a fair, proportionate and just sanction in this case was £500.

DECISION

To order that the Respondent pay to the Applicant the sum of £500.

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.

R. Cowan

Legal Member/Chair

Date 12 February 2019