

Housing and Property Chamber
First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16, Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/PR/18/1213

Rule 103 - Application for an Order for Payment where Landlord has not paid the deposit into an Approved Scheme

Re: 5 Montpelier Terrace, Edinburgh, EH10 4NE ("the Property")

Parties:

Remy Brugidou, 12 Hodge Street, Falkirk, FK1 1BN ("the Applicant")

Ali Assader c/o Letslet Property Management, 5 Clerk Street, Edinburgh, EH8 9JH ("the Respondent")

Tribunal Members:

Shirley Evans (Legal Member)

John Blackwood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent failed to comply with his duty as a Landlord in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011("the 2011 Regulations") as amended by The Housing (Scotland) Act 2014 (Consequential Provisions) Order 2017 by failing to pay the Applicants' Tenancy Deposit to the scheme administrator of an Approved Tenancy Deposit Scheme, grants an Order against the Respondent for payment to the Applicant of the sum of THREE THOUSAND SIX HUNDRED POUNDS (£3600) Sterling.

Background

1. By application dated 7 May 2018 the former tenant and Applicant applied to the First-tier Tribunal for Scotland (Housing and Property) Chamber for an

order for payment where a landlord has not paid a deposit into an approved scheme in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011("the 2011 Regulations"). The Applicant lodged a copy of a short assured tenancy between himself and Maria Dolores Alvarez and two other parties, whose names had been scored out as tenants, and the Respondent for the period 1 August 2012 to 1 February 2013. He also attached an exchange of email messages with the Respondent's representative Letslet Property Management some undated and others dated 31 January 2018 and 23 February 2018.

2. There had been two previous case management discussions in this matter. Notes of both Case Management Discussions were before the Tribunal. On 13 August 2018 a Case Management Discussion had proceeded before Mr Thorley, Legal Member. The Applicant was in attendance. Mr Akinosho and Ms Safwat from Letslet Property Management as representatives of the Respondent were also in attendance. At that Case Management Discussion, parties were in agreement that £1200 had been paid by way of a deposit at the commencement of the tenancy on 1 August 2012. The Respondent's Representative claimed that the deposit had been placed into an approved tenancy deposit scheme in the name of the Applicant's joint tenant, Maria Alvarez, but had not produced any documentation in support of that assertion. Mr Thorley therefore ordered that such confirmation be produced and continued the Case Management Discussion to 3 September 2018.
3. On 13 August 2018, Mr Akinosho produced an email dated 13 August 2018 and attached entry to the Tribunal from My Deposits Scotland that confirmed that £1000 deposit had been paid into the scheme on 14 December 2012 in the name of Maria Alvarez as lead tenant.
4. On 3 September 2018 the adjourned Case Management Discussion proceeded before Mr Stalker, Legal Member. The Applicant was in attendance. Mr Akinosho from Letslet Property Management as representative of the Respondent was also in attendance. The Applicant stated that he had only seen the email dated 13 August 2018 with the entry from My Deposits Scotland on 31 August 2018 for the first time. Up until then he had not been aware that £1000 of the £1200 deposit had been protected by My Deposits Scotland from 14 December 2012. He also claimed Ms Alvarez did not know this either. That was disputed by Mr Akinosho.
5. Mr Stalker pointed out that only £1000 of the £1200 deposit had been paid and that there had been a delay in paying the deposit into the scheme. Mr Akinosho tried to withdraw the concession he had made before Mr Thorley on 13 August that £1200 had been paid by way of a deposit and claimed that only £1000 had been so paid. Mr Stalker however referred Mr Akinosho to the tenancy agreement which provided for payment of a £1200 deposit and that at the previous Case Management Discussion, Mr Akinosho had accepted that. Mr Stalker found that it followed that the 2011 Regulations had not been

complied with and that in terms of Regulation 10 (a) of the 2011 Regulations the Tribunal must order the Landlord to pay the tenant an amount not exceeding three times the amount of the deposit. Mr Stalker accordingly continued the matter to a Hearing for evidence to be led in order for the Hearing to determine the amount of sanction.

6. Mr Akinosho also claimed at the Continued Case Management Discussion that under transitional arrangements in the 2011 Regulations, deposits did not have to be paid into an approved scheme until December 2012. Mr Stalker stated he would issue a decision on that point and issued a Note dated 4 September 2018. Mr Stalker's Note fully considered the 2011 Regulations and in particular Regulation 4, in terms of which he found that the deposit should have been paid into an approved scheme by 3 October 2012.
7. As the Tribunal had no authority to order the Respondent to pay the £200 being the amount of deposit that had not been paid into the scheme, Mr Stalker invited Mr Akinosho to consider making payment of £200 to the Applicant ahead of the Hearing.
8. The Applicant stated that he would fully account to Ms Alvarez for her share of the deposit and any sum recovered under the application before the Tribunal.
9. Mr Stalker confirmed that the Hearing would also determine whether the Applicant and Ms Alvarez had received intimation from the Respondent that £1000 had been lodged with My Deposits Scotland in terms of Regulation 3(1)(b) and 42 of the 2011 Regulations and invited the Applicant to consider whether it would be useful to hear evidence from Ms Alvarez.
10. On 4 September 2018 the Tribunal also issued a Direction under Regulation 16 of the First-tier tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Procedure Rules") for Letslet Property Management to intimate the Application and the Notes of the Case Management Discussions of 13 August and 3 September 2018 on the Respondent, to confirm whether Letslet still had instructions from Mr Assader to represent him and if so to provide written confirmation from him by no later than 1 October 2018 to that effect.

The Hearing

11. The Tribunal proceeded with the Hearing on 15 October 2018 to determine the sanction to be imposed on the Respondent under Regulation 10 and whether intimation under Regulations 3 (1) (b) and 42 of the 2011 Regulations had been complied with. The Applicant was personally present. The Respondent was represented by Mr Akinosho from LetsLet Property Management. The Respondent did not appear personally.

12. The Tribunal also had before it an Inventory of Productions from Letslet comprising 12 documents. It also had email correspondence from the Applicant to Letslet dated between 6 February 2018 and 29 April 2018, emails from the Applicant to Safe Deposits Scotland and My Deposits Scotland and some photographs and further correspondence from LetsLet dated 30 July 2018 and 13 August 2018 together with an email dated 13 August 2018 and attached entry from My Deposits Scotland. There was also a second letter purportedly dated 13 August 2018 from LetsLet with a letter dated 20 September 2018 signed by a Assadar Ali.
13. Both parties advised they had no other witnesses.
14. Before proceeding with the Hearing, the Tribunal dealt with the preliminary issues from the adjourned Case Management Hearing of 3 September 2018. The Tribunal asked Mr Akinosho whether the £200 being the difference in the deposit paid of £1200 and the £1000 protected by My Deposits Scotland had been paid. Mr Akinosho advised the Tribunal that £200 had been paid to the Applicant. The Applicant confirmed he had received this.
15. The Tribunal then referred Mr Akinosho to the Direction dated 4 September 2018. In response to that Direction, Mr Akinosho sent a letter to the Tribunal from Letslet signed by Mr Akinosho which appeared to be erroneously dated 13 August 2018 with a signed letter of authority from a Mr Assadar Ali dated 20 September 2018. Mr Akinosho explained that the date of the letter was wrong having used a previous letter to the Tribunal as a template. The Tribunal noted that the letter from LetsLet had been received by the Tribunal on 27 September 2018 and accepted that the date of 13 August 2018 was wrong.
16. The Tribunal enquired who Mr Assadar Ali was, as the tenancy agreement was in the name of Ali Assader. Mr Akinosho explained Assadar Ali was the same person as Ali Assader as it was the same name transposed. The Tribunal accepted that names could be transposed. However, the Tribunal pointed out there were two different spellings, namely Assader and Assadar. The Tribunal explained that it needed to be clear who the landlord actually was as any sanction for non-compliance of the 2011 Regulations was against the landlord and not LetsLet as the managing agent.
17. Mr Akinosho advised he had known Mr Assader for over 10 years. In order to quickly clarify matters the Tribunal asked Mr Akinosho for Mr Assader's landlord registration number in an attempt to get the full and correct spelling of his name. Mr Akinosho looked through his papers, but was unable to find a

note of the Respondent's landlord registration number. He explained that the Property was still let out and that as a matter of course LetsLet took copies of passports from Landlords before acting for them. He did not have a copy of the passport on his file. He asked the Tribunal for an adjournment to contact his office and the Respondent to get the landlord registration number and clarify the correct spelling of the Respondent's name. The Tribunal duly granted an adjournment.

18. After the adjournment, Mr Akinosho advised the Tribunal that LetsLet had no record of the Respondent's landlord registration number. He had called Mr Assader, but had not been able to speak to him. It appeared to Mr Akinosho that Mr Assader was not a registered landlord. The Tribunal confirmed that during the adjournment it had also made enquiries and was satisfied that the Respondent was not a registered landlord.
19. The Tribunal enquired as to whether in the circumstances Mr Akinosho was satisfied he had full authority to continue to represent Mr Assader at the Hearing. He confirmed he felt that he did have that authority. On that basis, the Hearing continued.
20. Mr Akinosho produced an undated document which he explained was a list of cheques LetsLet had sent to My Deposits Scotland. This included an entry shown in red which related to the Property which showed that a cheque for an unspecified sum had been sent to My Deposits Scotland on 13 November 2012. The Tribunal accepted this list into proceedings as a document to which Mr Akinosho wanted to make reference to. The Applicant was given an opportunity to consider this list.
21. By way of mitigation, Mr Akinosho stated that My Deposits Scotland had told him that as long as deposits were received by 13 November 2012, the 2011 Regulations would be complied with. The Tribunal reminded Mr Akinosho of Mr Stalker's decision of 3 September 2018 and referred him specifically to paragraphs 7 and 10-14 in terms of which the Tribunal had already determined that the deposit of £1200 should have been paid by 3 October 2012. The Tribunal had accordingly already determined those matters. Mr Akinosho enquired if he could appeal that decision. The Tribunal confirmed that the Respondent had had a right to appeal, but that time was now past.
22. The Tribunal pointed out that on the basis of the email and entry from My Deposits Scotland enclosed with his letter to the Tribunal of 13 August 2018, which he had relied on at the adjourned Case Management Discussion on 3 September 2018, only £1000 was protected as of 14 December 2012. No amount was protected as of 13 November 2012. Mr Akinosho reluctantly

accepted the Tribunal's previous determination that the £1000 had been paid late into the scheme.

23. Mr Akinosho stated that My Deposits Scotland had advised Ms Alvarez as lead tenant that £1000 was protected as of 14 December 2012. The Applicant denied this and claimed that the email address on the entry from My Deposits Scotland for Ms Alvarez was wrong. The Applicant however could not state what the correct email address was definitely. In any event the Applicant claimed he had not received information from the Respondent or LetsLet as to where the deposit was held and that the first he was aware that part of the deposit was held by My Deposits Scotland was on 31 August 2018 when he had received a copy of LetsLet's letter to the Tribunal with the email and entry from My Deposits Scotland. Mr Akinosho denied this and stated that the Applicant and Ms Alvarez had been advised, but was unable to provide any evidence of that.
24. Mr Akinosho explained that no further deposit was requested at the start of the continued tenancy dated 1 February 2013.
25. The Tribunal enquired what had happened to the remainder of the deposit, which had never been paid into a scheme throughout the whole of the tenancy. Mr Akinosho advised that he did not know as he could find no trace of the £200, but implied that that money may have been misappropriated by a former employee whom he stated was known to the Applicant.
26. Both parties were in agreement that the tenancy had terminated on 5 March 2018.
27. The Tribunal enquired as to whether the Respondent or LetsLet had advised My Deposits Scotland that the tenancy had ended. Mr Akinosho advised that they had not. £1000 was still with My Deposits Scotland and had not been dealt with. This was agreed by the Applicant.
28. The Tribunal referred Mr Akinosho to emails from the Applicant addressed to LetsLet dated 31 January 2018, 14 March 2018, 20 March 2018 and 18, 24 and 29 April 2018. He accepted that on each of these occasions, despite the Applicant enquiring about the deposit, LetsLet had failed to provide the Applicant with information about the deposit.
29. The Tribunal also referred Mr Akinosho to emails from LetsLet to the Applicant dated 14 March 2018, 19 March 2018 and 17 April 2018 in which LetsLet had advised the Applicant that they would deduct certain sums from the deposit without any reference to the scheme administrator's role in determining the

division of the deposit. He stated that staff at LetsLet should have given information to the Applicant about My Deposits Scotland.

30. The Applicant explained he had lived at the Property since 1 August 2012 until 5 March 2018. He did not know until 31 August 2018 that part of the deposit had been paid to My Deposits Scotland. He explained he had tried to find out where the deposit was held but LetsLet repeatedly ignored his requests. He had found LetsLet very unpleasant to deal with after the tenancy had ended. He disputed that LetsLet had the right to retain sums from the deposit. He had spent a lot of time and effort trying to get information as to where any money was held. He had eventually written to scheme providers trying to find where the deposit was held. He had been in contact with Ms Alvarez who was in Spain. He stated she did not know the deposit was held with My Deposits Scotland. His email to LetsLet of 31 January 2018 giving notice that both he and Ms Alvarez wanted to terminate the tenancy, also enquired about the deposit, but that and his other emails enquiring about what would happen to the deposit and where it was held were ignored.

31. The Tribunal explained to the Applicant that it had no jurisdiction to determine the division of the £1000 as that was a matter for My Deposits Scotland.

Findings In Fact

32. The Applicant had lived in the Property between 1 August 2012 and 5 March 2018. During that time there had been two written short assured tenancy agreements; the Applicant and Ms Alvarez were joint tenants of the Property with two other tenants in terms of a short assured tenancy between 1 August 2012 and 1 February 2013. After the initial short assured tenancy had terminated on 1 February 2013, the Applicant and Ms Alvarez and the Respondent entered into a further short assured tenancy from 1 February 2013 to 1 June 2013 which then continued on a monthly basis.

33. In terms of Clause 5 of both tenancy agreements the tenants agreed to pay a deposit of £1200. The deposit of £1200 was paid to Letslet as the Respondent's representative on or about 1 August 2012.

34. £1000 of the deposit was paid into My Deposits Scotland an approved tenancy deposit scheme on 13 November 2012.

35. £1000 became protected by My Deposits Scotland on 14 December 2012.

36. The £1000 was held by My Deposits Scotland under the name of Ms Alvarez as the lead tenant.

37. £200 of the Applicant's deposit had never been lodged or protected in an approved scheme.
38. Neither the Applicant nor Ms Alvarez received information from the Respondent or his agents LetsLet that £1000 of the deposit was protected by My Deposits Scotland from 14 December 2012.
39. The Respondent's agents LetsLet can find no trace of the remainder of the deposit of £200.
40. No further deposit was paid by the Applicant.
41. The tenancy terminated on 5 March 2018.
42. LetsLet did not advise My Deposits Scotland that the tenancy had ended.
43. The Respondent is not a registered Landlord, despite the Property being currently let out.
44. By email on 31 January 2018 the Applicant asked Letslet about how the return of the deposit worked. This was ignored by LetsLet.
45. By email on 14 March 2018 the Applicant enquired when the deposit would be released. This was ignored by LetsLet.
46. By email on 14 March 2018 LetsLet advised the Applicant that they would deduct a £290 cleaning fee from the deposit. This was disputed by the Applicant.
47. By email on 19 March 2018 LetsLet advised the Applicant that they would charge him for throwing out furniture he had left in the Property.
48. By email on 20 March 2018 the Applicant disputed he had left any items in the Property and demanded that the deposit be released within 14 days. This was ignored by LetsLet.
49. By email dated 17 April 2018 LetsLet advised the Applicant they were also going to charge the Applicant for late payments as well as for cleaning and removal of items.
50. By email dated 18 April 2018 the Applicant disputed that LetsLet were entitled to deduct any charges from the deposit and requested that LetsLet provide contact details of the scheme provider to allow the Applicant to use the dispute resolution service. This request was ignored by LetsLet.
51. By email dated 24 April 2018 the Applicant again requested details of the scheme provider. This was ignored by LetsLet.

52. By email dated 29 April 2019 the Applicant again requested details of the scheme provider. This was ignored by LetsLet.
53. The Applicant carried out enquiries with scheme providers including My Deposits Scotland and Safe Deposits Scotland in an attempt to trace his deposit, but was unable to trace the deposit which unbeknown to him was held by Safe Deposits Scotland in Ms Alvarez's name as lead tenant.
54. The Applicant was unaware as to who held part of the deposit until 31 August 2018 when he was provided with a copy of LetsLet's letter of 13 August with emails from My Deposits Scotland dated 13 August 2018.
55. The dispute regarding the deposit has not been referred to My Deposits Scotland who still hold £1000.
56. Since the continued Case Management Discussion of 3 September 2018 the Applicant received £200 from LetsLet being the part of the deposit which was unprotected.

Reasons For Decision

57. For the purpose of Regulation 9(2) of the 2011 Regulations the Tribunal found that the application was made in time within 3 months of the tenancy termination. The 2011 Regulations were intended, amongst other things to put a landlord and a tenant on equal footing with regard to any tenancy deposit and to provide a mechanism for resolving any dispute between them with regard to the return of the deposit to the landlord or tenant or divided between both, at the termination of a tenancy.
58. The amount to be paid to the Applicant is not said to refer to any loss suffered by the Applicant. Accordingly, any amount awarded by the Tribunal in such an application cannot be said to be compensatory. The Tribunal in assessing the sanction level has to impose a fair, proportionate and just sanction in the circumstances, always having regard to the purpose of the 2011 Regulations and the gravity of the breach. The Regulations do not distinguish between a professional and non-professional Landlord. The obligation is absolute on the Landlord to pay the deposit into an Approved Scheme.
59. In assessing the amount awarded, the Tribunal has discretion to make an award of up to three times the amount of the deposit, in terms of Regulation 10 of the 2011 Regulations.
60. The Tribunal considered that the Respondent had not complied with the 2011 Regulations in two respects as detailed in Mr Stalker's decision of 4 September 2018. It was unsatisfactory that for the whole of the period of the tenancy £200 of the deposit was not placed into an approved scheme. The Tribunal also noted that the Respondent's representative from LetsLet at the Case Management Discussion on 3 September 2018 before Mr Stalker had

tried to withdraw a concession made before Mr Thorley at the Case Management Discussion on 13 August 2018 that a deposit of £1200 was paid and that only £1000 had been paid.

61. The Respondent's representative reluctantly accepted the findings of the Tribunal on 3 September 2018. The Tribunal formed the impression that the Respondent was not willing to engage personally with the Tribunal and had simply left his agents to explain the position and their actions to the Tribunal. The Respondent had abrogated responsibility to his agents and was not prepared to present at the Tribunal himself.
62. It was of grave concern to the Tribunal that the Respondent was not a registered Landlord in terms of the Anti-Social Behaviour etc (Scotland) Act 2004 which in itself indicated to the Tribunal that the Respondent did not accept his responsibilities as a Landlord. This failure in itself carries a criminal penalty and was not something that could be ignored by the Tribunal in considering a just and proportionate sanction to impose on the Respondent.
63. The Tribunal were also concerned that the Respondent had failed to comply with his duties under Regulations 3(1) (b) and 42 of the 2011 Regulations to provide the Applicant and the lead tenant Ms Alvarez with information as to where the part of the deposit that was protected from 14 December 2012 was held. At no time during or after the tenancy terminated did the Respondent's agents provide the Applicant with any information about the scheme administrator.
64. The Tribunal was concerned to note the content of the emails from LetsLet to the Applicant after the tenancy had terminated. There was a dispute regarding the deposit. These emails repeatedly gave the Applicant the impression that LetsLet would deduct various charges such as cleaning from the deposit. At no point during the course of the correspondence did LetsLet as the Respondent's representative advise the Applicant that £1000 was protected in an approved scheme. The content of the correspondence from LetsLet was not transparent and in the opinion of the Tribunal was an attempt to place pressure on the Applicant to accept that certain monies should be deducted from the deposit. At no stage during their course of correspondence with the Applicant did LetsLet properly advise the Applicant that part of the deposit was protected which would enable My Deposits Scotland to adjudicate between parties on the return of the deposit and the division of payment as between the parties. In that regard the Applicant was placed under pressure and was prejudiced by the Respondent's failure to advise the Applicant where £1000 of the £1200 deposit was held.
65. Whilst the Tribunal accepted that the unprotected part of the deposit of £200 had been recently paid to the Applicant, that did not outweigh the fact that that amount had been unprotected for over 5 years and during the whole of both tenancies. This was a significant breach. At no point had the Respondent or his representative made any effort to advise the Applicant of where the

remainder of his deposit was held which had clearly caused him a great deal of anxiety and inconvenience..

66. As a whole the Tribunal formed the impression the Respondent felt he could ignore his legal responsibilities as a landlord and had done so by his failings under the 2011 Regulations to ensure that the full deposit was paid into an approved scheme on time and by his failure to register as a landlord.

Decision

67. In all the circumstances, the Tribunal was inclined to order the maximum amount of three times the Tenancy Deposit. The Tribunal considered that a fair, proportionate and just amount to be paid to the Applicant was £3600 and accordingly made an Order for Payment by the Respondent to the Applicant in that amount.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Shirley Evans

**Shirley Evans
Legal Member/Chair**

**17 October 2018
Date**