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 Regulations 9 and 10 Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations")

Chamber Ref: FTS/HPC/PR/22/3253

Property at Upper Villa, Primrosebank, Paterson Place, Haddington, EH41 3DU ("the Property")

Parties:

Miss Patricia Danson, 28A Park Drive, Whitehaven, Cumbria, CA28 7RY ("the Applicant")

Mr Ewan Minty, 3 Kirk Park, Dunbar, Edinburgh, EH42 1BJ ("the Respondent")

Tribunal Member:

Josephine Bonnar (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment of the sum of £ 750 should be made in favour of the Applicant.

Background

1. By application lodged on 6 September 2022, the Applicant seeks an order in terms of Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and Regulations 9 and 10 of the 2011 Regulations. The Applicant lodged a copy of her tenancy agreement and a certificate from Safe Deposit Scotland ("SDS"), which states that a deposit of £1400 was lodged on 17 June 2022. A letter addressed to the Respondent giving notice to terminate the tenancy on 31 August 2022 was also lodged in support of the application. In response to a direction, the Applicant lodged evidence of a payment made to the Respondent on 28 February 2022 of £2800, with an explanation that this was the first months rent and the deposit

2. A copy of the application and supporting documents were served on the Respondent. Both parties were advised that a case management discussion ("CMD") would take place by telephone conference call on 24 November 2022 at 2pm and that they were required to participate. Prior to the CMD the

Respondent submitted written representations.

3. The CMD took place on 24 November 2022 at 2pm. The Applicant and Respondent both participated.

The Respondent's written submissions

4. The Respondent stated that he would like to apologise for the late lodging of the deposit. He said that the deposit and rent were supposed to be £1450, but he had reduced them to £1400 at the request of the Applicant and joint tenant. He deals with all tenancy administration himself and usually insists on the deposit being paid as soon as the let is arranged. He then lodges it in a scheme. In this case he agreed to defer payment unit the start of the tenancy. He was going through a very busy period at work and had several requests from the Applicant in relation to repairs and other matters which also took up time. This contributed to him forgetting to lodge the deposit. As soon as the matter was brought to his attention by the Applicant he realised his error, lodged the deposit, and notified the Applicant. The failure was due to oversight and was not deliberate. Although there was some damage to the property at the end of the tenancy, he agreed to release the whole deposit to the applicant at the end of the tenancy, as a good will gesture (evidence provided). He also assisted the Applicant when she was moving out. Mr Minty stated that he has been renting properties since 2006 and this is the first time that he has been taken to a Tribunal. He plans to reduce the number of properties he rents out to avoid this happening again.

The CMD

5. From the application form, the documents lodged in support of the application and the information provided at the CMD by both parties, the Legal Member noted the following:

(i) The tenancy started on 1 March 2022 and terminated on 31 August 2022.

(ii) The Applicant paid a deposit of £1400 on 28 February 2022.

(iii) The deposit of £1400 was not lodged in an approved tenancy deposit scheme until 17 June 2022.

(iv) It is conceded by the Respondent that the deposit was lodged more than 30 working days after the start of the tenancy.

(v) The whole deposit was repaid to the Applicant at the end of the tenancy.

6. Ms Danson told the Legal Member that she and her partner, the joint tenant, became concerned when they did not receive a certificate through from the deposit scheme. The tenancy agreement stipulated that it would be lodged with

SDS. They have rented before and knew that it was a requirement. Eventually, she sent a message to Mr Minty, and he replied with the deposit details. She then received a phone call from SDS to ask about the start date of the tenancy. SDS had been told that it was 1 March, and they were checking that this was right as it meant that the deposit had been lodged late. Although she did not suffer any financial impact, she experienced worry and stress from about the beginning of April until the evidence that the deposit had been lodged was provided. It was a substantial sum of money and she and her partner did not know what had happened to it. Ms Danson also said that they have never had to chase up a landlord before to ensure that the deposit has been lodged and should not have to do so. In response to questions from the Tribunal, Ms Danson said that she did not dispute the explanation for the late lodging of the deposit provided by Mr Minty but felt that the circumstances justified an award of twice the deposit.

7. Mr Minty told the Tribunal that the failure was due to oversight, and he thought that he had lodged the deposit. His failure, and the consequences, have upset him and he is scaling back his letting concerns. He said that he has been landlord for 16 years and has 10 properties. This was the first time that he has failed to comply with the regulations. Following the start of the tenancy he was in regular contact with the Applicant and the joint tenant. They did not mention the deposit until 15 June. That said, he understands that it is his responsibility. He arranged to lodge the deposit as soon as it was brought to his attention and did not attempt to cover up the error. Mr Minty concluded by describing the incident as a "first time offence" and said that the penalty should be no more than £500.

Findings in Fact

8. The Applicant is the former tenant of the property.

9. The tenancy started on 1 March 2022.

10. The Respondent is the owner and former landlord of the property.

11. The Applicant paid a deposit of £1400 on 28 February 2022.

12. The tenancy terminated on 31 August 2022.

13. The deposit paid by the Applicant was not lodged by the Respondent in an approved tenancy deposit scheme until 17 June 2022.

14. The deposit paid by the Applicant was repaid to her at the end of the tenancy.

Reasons for Decision

15. Regulation 3 of the 2011 Regulations states –

(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.

(1A) Paragraph (1) does not apply –

(a) Where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and
(b) The full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord,
Within 30 working days of the beginning of the tenancy.

16. The Tribunal is satisfied that the Applicant's tenancy is a relevant tenancy in terms of the 2011 Regulations and that a deposit of £1400 was paid and not lodged in an approved deposit scheme within 30 days of the start of the tenancy. The Tribunal notes that the application was lodged with the Tribunal on 6 September 2022. The Applicant has therefore complied with Regulation (9)(2) of the 2011 Regulations, which requires an application to be submitted no later than 3 months after the tenancy had ended.

17. Regulation 10 of the 2011 Regulations stipulates that if the Tribunal is satisfied that the landlord did not comply with a duty in terms of regulation 3, it "(**a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit."** The Tribunal therefore determines that an order must be made in favour of the Applicant.

18. The Legal Member notes that the deposit was lodged in an approved scheme by the Respondent two months and five days after the expiry of the 30-day period specified in the 2011 Regulations. The tenancy terminated on 31 August 2022 and the deposit was secured from 17 June 2022 until that date. It is not disputed by the Applicant that the late lodging of the deposit was an oversight on the part of the Landlord and that the Landlord rectified the oversight as soon as it was brought to his attention. There were no financial consequences for the Applicant and the deposit was repaid to her in full on 8 September 2022, nine days after the tenancy ended. The Legal Member notes that the Applicant experienced stress and anxiety for a period of time. She and the joint tenant were aware of the usual process and could not understand why they had not received a certificate from SDS confirming that the deposit had been lodged.

19. As the Applicant pointed out, the responsibility for lodging the deposit in a scheme rest with the Landlord and a tenant should not have to contact the landlord to make sure he has complied with his legal obligations. Furthermore, the Respondent admits to being an experienced landlord, with a number of properties, and fully aware of his obligations. He told the Legal Member that he deals with all administrative matters himself and, due to work commitments, lost

sight of this particular deposit. While this may have been the case, it does not excuse the oversight which might have been avoided had he realised that he was too busy to attend to matters and arranged to instruct a letting agent or employ someone to assist with administration

20. In the case of Rollett v Mackie (2019 UT 45), the Upper Tribunal refused the appeal by the Applicant who argued that the maximum penalty ought to have been imposed. Sheriff Ross commented that the "level of penalty requires to reflect the level of culpability" and that "the finding that the breach was not intentional…tends to lessen culpability" (13). He goes on to say, "Cases at the most serious end of the scale might involve repeated breaches against a number of tenants, fraudulent intention, deliberate or reckless failure to observe responsibilities, denial of fault, very high financial sums involved, actual losses caused to the tenant."

21. In the present case, none of the aggravating factors highlighted by Sheriff Ross are present. Furthermore, although the Applicant did experience some anxiety, there was no financial loss, and the deposit was unsecured for a relatively short period of time. The failure was due to oversight and was remedied as soon as it came to light. Having regard to the fact the Respondent is an experienced landlord and fully aware of his obligations, the Legal Member is nonetheless satisfied that the breach is at the lower end of the scale and that an award of £750 should be made in favour of the Applicant.

Decision

22. The Tribunal determines that an order for payment of the sum of £750 should be made in favour of 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.

Josephine Bonnar, Legal Member **24 November 2022**