

**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/23/0831**

**Re: Property at 60 Westfarm Crescent, Cambuslang, Glasgow, G72 7RQ (“the Property”)**

**Parties:**

**Mr Kau Tai NG, 16 Silverbanks Gait, Cambuslang, Glasgow, G72 7FL (“the Applicant”)**

**Mrs Rohila Mohammed, 22 Elliot Street, Glasgow, G3 8EB (“the Respondent”)**

**Tribunal Members:**

**Lesley Ward (Legal Member)**

**1. Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent failed to comply with any duty in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and shall make payment to the Applicant the sum of one thousand pounds (£1000).**

**2.** This was a case management discussion (‘CMD’) in connection with an application in terms of regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations (‘the regulations’) and rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Regulations) 2017, (‘the rules’) for a penalty for a failure to lodge a tenancy deposit.

**Preliminary matter**

**3.** The Respondent attended the CMD with a Mr Jaffrey as her supporter. Mr Jaffrey assisted the Respondent in presenting her views to the tribunal. The Applicant initially did not attend but his wife Mrs Ng attended. The tribunal adjourned to enable the

Applicant to email the tribunal and confirm that he wished his wife to attend as his representative. Mr Ng sent an email confirming this but when the tribunal reconvened Mr Ng was also present on the line.

4. The tribunal had before it the following copy documents:

- Application dated 8 March 2023.
- Short assured tenancy between the parties from 15 August 2015 until 14 August 2026.
- Short assured tenancy between Mr Kau Tai NG, Mrs Yuk Lin NG and Mrs Rohila Mohamed from 15 April 2008 to 15 October 2008.
- Letter from Applicant to Respondent dated 15 November 2022 regarding the end date of tenancy.
- Email from the Respondent to the tribunal dated 18 May 2023.
- Email from the Respondent to the tribunal dated 31 May 2023.

### **The Applicant's position**

5. A deposit of £795 was paid to the Respondent in 2008. This was not lodged in a deposit scheme until August 2022. The Applicant received a text message from the deposit scheme administrator in October 2022. The tenancy came to an end on 14 January 2023. The deposit was returned to the Applicant following an adjudication by the deposit scheme via the adjudicator of the deposit scheme. The Applicant received notification from the Respondent in August 2022 that the rent was increasing from £850 to £1395 and this may have been what led to the deposit being lodged as the Respondent may have been anticipating the tenancy coming to an end.

### **The Respondent's position**

6. This is the Respondent's sole property that she rents out as a registered landlord. She took a deposit of £795 in 2008 before the deposit scheme regulations came into force. A new tenancy was entered into in the applicant's sole name at his request in 2015. It was only in speaking to a friend in 2022 that the Respondent realised she had an obligation to lodge the deposit in a deposit scheme. She did so in August 2022. The Applicant refused to provide an email address and the deposit scheme had difficulty in notifying the Applicant of the deposit. This was ultimately done by text message. The Respondent did not notify the Applicant that the deposit was being lodged. The Applicants left the property in January 2023 in a poor condition. The Respondent was unable to furnish the adjudicator of the scheme with the check in report and the full deposit was returned to the Applicant despite the condition of the property.

## **7. Findings in fact**

- The Respondent is the owner of the property.

- Mr and Mrs NG and the Respondent entered into a tenancy agreement for let of the property in April 2008 and the sum of £795 was paid by way of a deposit.
- The parties entered into a new tenancy agreement in August 2015 for let of the property.
- The Respondent failed to lodge the deposit paid in 2008 into a recognised deposit scheme until August 2022.
- The Respondent failed to notify the Applicant that the deposit had been lodged.
- The deposit has been returned to the Applicant.

## **Reasons**

8. This was a clear breach of the regulations. The deposit was paid before the scheme came into force and the deposit carried over to the new tenancy agreement entered into in 2015. In terms of regulation 47 of the regulations (the transitional provisions) the deposit in this case should have been lodged within 30 working days, 9 months after any deposit scheme came operational. The first scheme became operational on 2 July 2012 and therefore this deposit should have been protected 30 working days after 2 April 2013. The deposit was unprotected for around 9 years. In addition the Respondent failed to notify the Applicant that the deposit was being lodged, the scheme used and so on, as required by regulation 42.

9. Turning to the gravity of the breach, the tribunal reviewed the cases in connection with tenancy deposits. The tribunal was mindful of the decision of Sheriff Jamison in Kirk-v- Singh 2015 S.L.T.(Sh Ct) 111 and the need to impose a sanction that is fair proportionate and just. This was a serious breach but not at the top end of the scale as the deposit was lodged and repaid to the Applicant. In mitigation Mrs Mohammed only rents out one property and it appears that her failure to lodge the deposit was not wilful. The maximum penalty is three times the deposit (£2385). The tribunal decided a penalty of £1000 (which is a little higher than the deposit of £795) was fair proportionate and just given the length of time the deposit was unprotected.

## **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.**



**Lesley Anne Ward**

**7 June 2023**

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**Legal Member/Chair**

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**Date**