



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/22/1966**

**Re: Property at Flat 3/1, 16 Gibson Street, Hillhead, Glasgow, G12 8NX (“the Property”)**

**Parties:**

**Miss Scarlett McGourlay, Ms Claire Whitehead, Ms Eve Tulloch, 24 Beecham Road, Shipston-On-Stour, Warwickshire, CV36 4RJ; Flat 3/1, 12 Montague Street, Glasgow, G4 9HX; Flat 3/1, 12 Montague Street, Glasgow, G4 9HX (“the Applicant”)**

**Grant Residential Investment Ltd, 14 Coates Crescent, Edinburgh, EH3 7AF (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay to the Applicants the sum of £600 by way of sanction having found that the Respondent has breached the duties set out in Regulations 3 and 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.**

**Background**

1. This application for sanction on a landlord in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 was first lodged with the Tribunal on 21<sup>st</sup> June 2022 and accepted by the Tribunal on 25<sup>th</sup> August 2022. A case management discussion was set down for 4<sup>th</sup> November 2022 at 2pm. On this date the Applicant was who was attending to represent all the Applicant could not access the case management teleconference despite a number of attempts and the Tribunal legal member

considered that it was appropriate to adjourn the case management discussion to a later date to allow the Applicants to attend or be represented.

### **Case Management Discussion**

2.The adjourned case management discussion took place on 24<sup>th</sup> February 2023 at 2pm.Ms Claire Whitehead attended to represent all of the Applicants. The Respondent was represented by Ms Lilian Napier of Sandstone UK Property Management Solutions Ltd who are managing agents for the landlord, having taken over this role from Grant Property Management Solutions Ltd. Ms Penny Mackenzie of Sandstone also attended the case management discussion.

3.The Tribunal Legal Member confirmed that the application had been accepted against the managing agent “Sandstone Ltd” and the landlord in terms of the tenancy agreement, Grant Residential Investment Ltd. The Tribunal legal member explained that the duties in terms of Regulations 3 and 42 the Regulations fall to be complied with by a landlord even if they use an agent to manage a let property and Ms Whitehead confirmed that she was seeking to proceed against the landlord only, Grant Residential Investment Ltd.

4.The Tribunal had sight of the application, a tenancy agreement, e mails from the Letting Agent Sandstone Property, an email from a tenancy deposit scheme provider and e mails from the Applicants to the tribunal.

5.There was no dispute that the tenancy between the Applicants and Respondent commenced at the property on 3<sup>rd</sup> May 2021 and the three Applicants had paid a deposit of £1900 between them before the start of the tenancy. This deposit had been returned to them in full after the tenancy ended on 7<sup>th</sup> June 2022.The Applicants had received an email from Safe Deposits Scotland after the end of the tenancy advising that their deposit had been protected late.

6.Ms Whitehead advised the Tribunal Legal Member that the Applicants had received the information required to be given to them in terms of Regulations 3 and 42 of the 2011 Regulations regarding the amount of the deposit, when it was paid, the date it was paid into an approved scheme, the property address, landlord registration details and the circumstances which the deposit might be retained in whole or in part by email on 21<sup>st</sup> June 2021.They had been advised by Safe Deposits Scotland on 20<sup>th</sup> June 2022 that the deposit had been protected with effect from 17<sup>th</sup> June 2021 which was outwith the required 30 working day period. Ms Whitehead indicated that the Applicants had expected that the deposit was to be held within SafeDeposits Scotland as this provider had been mentioned in the tenancy agreement.

7.On behalf of the landlord Ms Napier advised that it was accepted that the Regulations had been breached by the Landlord as the Letting Agents acting on the landlord’s behalf had protected the deposit late and had given the information required in terms of Regulations 3 and 42 of the 2011 Regulations late too. She tendered apologies for the breach. She explained that the agents managed 32 properties on behalf of the landlord, their entire portfolio, and they dealt with all matters relating to the tenancy on the landlord’s behalf including the protecting and return of deposits. At the time this deposit was received, the team were short staffed due to staff absence

for various reasons, and this was during the latter part of the pandemic when some were on furlough. The deadline to protect the deposit had been missed but was picked up a few days later and the deposit was protected, and the required information given to the Applicants. At the time a weekly check of deposits received was undertaken but now in order to prevent this happening again a daily check is done. Ms Napier had calculated that the deposit should have been protected and the information given to the Applicants by 11<sup>th</sup> June 2021. The deposit was protected some 4 working days late and the required information was given 6 working days late. Ms Napier again apologised that this had occurred and asked that the circumstances be taken into account when an appropriate sanction was decided.

8. The Respondent's representative having admitted the breach of the Regulations the Tribunal required to consider the appropriate sanction to be imposed in relation to the application.

9. Ms Whitehead did not wish to address the Tribunal Legal Member regarding the level of any sanction to be imposed.

10. The Tribunal Legal Member was satisfied that there was sufficient information before the Tribunal to allow a decision to be made and that the proceedings had been fair.

## **Findings in Fact**

11. The Applicant and the three Respondents entered into a private residential tenancy at the property with effect from 3<sup>rd</sup> May 2021 and this tenancy ended on 7<sup>th</sup> June 2022.

12. A total deposit of £1900 was paid by the three Applicant to agents on behalf of the Respondent before the tenancy commenced.

13. The tenancy between the parties was a relevant tenancy within the meaning of Regulation 3 of the Tenancy Deposit Schemes ( Scotland) Regulations 2011.

14. The deposit paid by the Applicants was not secured by or on behalf of the Respondent in any of the approved tenancy deposit schemes within the timeframe required by the 2011 Regulations and was protected some 4 working days late.

15. The information required to be given to the Applicant by the Respondents in terms of Regulation 3 and 42 of the 2011 Regulations was not given by or on behalf of the Respondent to the Applicants within the timeframe required by the 2011 Regulations and was given some 6 working days late.

16. The Respondent is therefore in breach of a landlord's duties in terms of Regulation 3 of the Tenancy Deposit Schemes ( Scotland ) Regulations 2011.

17. The Applicants had their whole deposit returned to them after the end of the tenancy.

18.The Respondent has a portfolio of 32 properties and all arrangements for receipt and return of tenancy deposits for these properties are managed by agents on their behalf.

### **Reasons for Decision**

19.The tribunal having found that there was a breach of the Regulations, it then fell to the tribunal to consider what sanction should be made in respect of the failure to protect the deposit and give the information required in terms of Regulations 3 and 42 of the 2011 regulations within the required time frame. The tribunal had regard to the case of ***Russell Smith and others against Uchegbu [2016] SC Edinburgh 64***.In particular the tribunal considered what was a fair proportionate and just sanction in the circumstances of the case, always having regard to the purpose of the Regulations and the gravity of the breach. Each case will depend on its own facts and in the end of the day the exercise by the tribunal of its judicial discretion is a balancing exercise.

20.The tribunal considered all of the information before it and found there were a number of factors to be considered in this application. The breach had occurred due to an oversight on the part of the Respondent's managing agents at the latter part of the pandemic. The Letting Agent had been short staffed and the required timeframe for protecting the deposit had lapsed before a staff member spotted the oversight and protected the deposit and ensured the required information in terms of the Regulations was sent to the Applicants. The breach appeared to be an oversight and had been rectified quickly. The deposit was protected 4 days late and the required information was given 6 days late. The Respondent's agents now carry out daily checks to ensure they do not miss the receipt of any deposit to be protected and their system triggers the required information to be sent after the deposit is protected. The Applicants had their deposit returned to them in full after the end of the tenancy.

21.The circumstances before the Tribunal suggested this breach of the Regulations had been an oversight on the part of the Respondent's agent and had quickly been corrected and the Applicants' deposit had been secured and returned to them at the end of the tenancy. The maximum sanction open to the Tribunal in this application was £5700 but the Tribunal took the view that this was a breach which could be dealt with at the lower end of the range of possible sanctions and imposed a sanction of £600, just over 10% of the maximum sanction available, given the circumstances of this application.

### **Decision**

The Tribunal determined that the Respondents should pay to the Applicants the sum of six hundred pounds (£600) having found that the Respondents have breached the duties set out in Regulations 3 and 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

## 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.

Valerie Bremner

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Legal Member/Chair

24.2.23  
Date