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/22/2206

Re: Property at 11 Eider Westerlands Park, Glasgow, G12 0FD ("the Property")

Parties:

Mr Isaac Hinman, Bourtree Cottage, Chapel Road, Houston, PA6 7HP ("the Applicant")

Mrs May Showkat, 20 Laurel Park Close, Glasgow, G13 1RD ("the Respondent")

Tribunal Members:

Rory Cowan (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that: (i) the Respondent failed to comply with Regulations 3(1)(a) and (b) of the Tenancy Deposit Schemes (Scotland) Regulations 2011; and (ii) that the sum of £750, was an appropriate sanction.

- Background

By Application under Rule 103 dated 2June 2021 (the Application) the Applicant sought an order for payment against the Respondent for an alleged failure to pay a tenancy deposit into an approved scheme as well as a failure to issue prescribed information to him and his former joint tenant. In support of the Application, the Applicant produced various documents including a copy of the tenancy agreement dated 4 June 2021, letter of authority from his former joint tenant to act, copy correspondence and communications from SafeDeposits Scotland confirming the date the deposit was lodged with an approved tenancy deposit scheme, as well as the deposit repayment proposal and copy communications between the Applicant and the Respondent that dealt with the issue of the termination of the underlying lease. A Case Management Discussion (CMD) was assigned to take place initially on 19 September 2022 but was postponed due to the closure of the Tribunal on that

date and a new CMD was assigned for 1 November 2022 to be conducted by way of conference call. The Applicant appeared and represented himself. The Respondent also appeared and represented herself.

- The Case Management Discussion

The nature of the Application was discussed with the parties and, in particular, what the Tribunal was potentially empowered to do should there be a finding that there had been a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (the 2011 Regulations). Both parties indicated that they understood what was to be discussed and what the Application related to.

There was no dispute between the parties as to the relevant facts. The lease for the Property commenced on 6 June 2021 and was terminated as at 17 June 2022. A security deposit of £1,750 was paid by the Applicant and his joint tenant to the Respondent's letting agents and then passed to the Respondent by those letting agents. The agents had been engaged on a "let only" basis and the Respondent was responsible for the management of the tenancy as well as paying the security deposit into an approved scheme. It was a matter of agreement that the security deposit was not paid into an approved tenancy deposit scheme until 21 June 2022 a period of some 11months or so after the date it should have been protected and after the end date of the tenancy. No prescribed information had been issued relative to the said security deposit.

The Respondent acknowledged that she had failed to comply with regulation 3(1)(a) and (b) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (the Regulations).

The Respondent indicated that she had paid the security deposit into an approved scheme after the tenancy had been ended was because the Applicant had refused to deal with her regarding return of the deposit directly and had insisted it go into an approved scheme. This was agreed by the Applicant who had indicated that there was a discussion about rent arrears that were due as well as a small claim by the Respondent against the deposit that he initially disputed. The Respondent indicated that there was an issue with the condition of the garden and the refuse bins after the Applicant and his joint tenant had vacated the Property. Both parties agreed that, after being offered formal adjudication through SafeDeposits Scotland, the Applicant and his joint tenant agreed to the repayment proposal and received £1,000 of the deposit back from SafeDeposits Scotland on or around 20 September 2022 and the remaining £750 was paid to the Respondent.

As the Respondent had accepted a breach of the Regulations, the Tribunal therefore indicated that parties would be given the opportunity to make submissions on the level of the appropriate penalty in this case taking into account the circumstances and anything that may be said in mitigation. The Applicant indicated that he had nothing to add to what he had already said. The Respondent indicated that she works as a General Practitioner for the NHS in a deprived part of Glasgow. That for the last few years and at the time the deposit had been received by her, that her job has been very hectic due to the COVID pandemic and she had been struggling to meet patient demands and that [those demands] were "a lot to take on". That, as a

result, she simply “forgot” to pay the security deposit into an approved tenancy deposit scheme. She indicated that the Property was the only property that she let out, but that she had been a private landlord for approximately 6 years. That she was aware of the requirement to pay the security deposit into a scheme and that all security deposits for previous tenancies and the current tenancy she has for the Property had been and are lodged with an approved tenancy deposit scheme.

- Findings in Fact and Law

1) The Respondent is the landlord for the purpose of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
2) The Applicant was one of the joint tenants of the Respondent in terms of a tenancy agreement for the property at 11 Eider Westerlands Park, Glasgow G12 0FD that commenced on 6 June 2021.
3) That, under the terms of the tenancy agreement, the Applicant and his joint tenant paid to the Respondent the sum of £1750 by way of security deposit.
4) That the security deposit of £1750 was not paid into an approved tenancy deposit scheme until 21 June 2022 which is out with the required 30 working days period.
5) That the Respondent has therefore failed to comply with regulation 3(1)(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
6) That the Respondent did not issue the information to the Applicant as required by regulation 3(1)(b) and as prescribed by regulation 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
7) That the tenancy between the parties is at an end and £1,000 of the deposit has been returned to the Applicant and his joint tenant by SafeDeposits Scotland after the Applicant and his joint tenant agreed with the Respondent’s repayment proposal and the proposed deductions.
8) That an appropriate penalty is a sum equivalent to £750.

- Reasons for Decision

The Respondent admitted that she had not complied with her obligations under regulation 3(1)(a) and (b) of the 2011 Regulations. Her position being that, whilst she was aware of those obligations, her “day job” as a General Practitioner had been so demanding she had simply forgotten to pay the security deposit into an approved tenancy deposit scheme. She accepted that this was no defence to such the Application. The only real issue therefore for the Tribunal in the face of such an admission of breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 is to consider the level of the appropriate sanction. The level of such a penalty is a matter of discretion for the Tribunal taking into account the particular circumstances of the case when considering the approach to the level of the appropriate sanction (*Jensen v Fappiano [2015] 1WLUK 625*). It is a penalty for breach of the Regulations and not compensation for damage suffered (*Wood & Wood v Johnston UTS/AP/19/0023).* Whilst the Respondent may not be the most experienced of landlords, she has been, by her own admission, a landlord for a period of roughly 6 years with tenants prior to the Applicant. Whilst it was noted that the deposit had remained unprotected for the whole term of the tenancy, the Respondent did pay the security deposit into an approved scheme when it became clear that she had not and that there was a potential dispute over the repayment of the deposit. In that respect,

it could therefore be said that Applicant and his joint tenant belatedly received at least some of the protection the regulations were designed to provide. It was the Applicant and his joint tenant that chose not to seek adjudication over the small sum in dispute (having accepted they were in arrears of rent). This, in the view of the Tribunal, combined with what the Tribunal accepted (and which was not challenged by the Applicant) must have been a very difficult time professionally for the Respondent due to the ongoing COVID pandemic, reduces the level of the Respondent's culpability for her admitted breach of the Regulations.

For all these reasons the Tribunal reached the conclusion that the non-compliance in this case was inadvertent and at neither extreme of the spectrum of triviality. Taking this into account and all the circumstances of the Application and the parties' oral submissions, the Tribunal was of the view that this was an example of a case where the Respondent's culpability was to the lower end. The appropriate sanction therefore would be to make an award at the level of £750 so that, in effect, the full amount of the original deposit would be returned to the Applicant.

- Decision

The Tribunal orders that the Respondent pay to the Applicant the sum of £750.

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.

Rory Cowan

_____ _____1 November 2022_____
Legal Member/Chair Date