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/20/1559

Re: Property at 10/2 Jamaica Mews, Edinburgh, EH3 6HN ("the Property")

Parties:

Mrs Jean Davidson, 1 North Greenlaw Way, Newton Mearns, Glasgow, G77 6GZ ("the Applicant")

Mr Martin Campbell, c/o DJ Alexander, 1 Wemyss Place, Edinburgh, EH3 6DH ("the Respondent")

Tribunal Members:

Valerie Bremner (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that there was no failure to comply with the duties in Regulation 3 of the 2011 Regulations in relation to this Application therefore the Application for sanction against the Respondent was refused. The Decision of the Tribunal was unanimous.

Background

1. This Application relates to a request to sanction a landlord for an alleged failure to comply with the duties under Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011. The Application was first lodged with the Tribunal on 22 July 2020 and was accepted by the Tribunal on 18 August 2020.

2.Two case management discussions took place in relation to this Application. The first of these took place on 2 October 2020. Throughout the proceedings the Applicant was represented by her daughter Mrs Jane Davidson and the Respondent was represented by Mr David Alexander of DJ Alexander Property Sales and Lettings, the letting agent dealing with the matter on behalf of the landlord.

3.At the first case management discussion on 2 October 2020 a number of matters were discussed. The Applicant's Representative raised the issue as to whether the tenancy deposit taken in respect of the tenancy, some £550, had been protected timeously in terms of Regulation 3(a) of the 2011 Regulations. The Applicant's representative also raised the issue of whether the terms of Regulation 3(b) had been complied with in respect of the provision of information required under Regulation 42. She referred to a letter which had been received by the Applicant in April 2013 and was dated 5 April 2013 and appeared to confirm the payment of the deposit into an approved scheme and referred to a prescribed information document. She indicated that this letter had been received well outwith the 30 working day period from the start of the tenancy. For the Respondent Mr Alexander indicated that he understood the deposit had been paid into an approved tenancy deposit scheme within the timescale required in terms of the transitional provisions under the Regulations and he understood that the information required under regulation 42 had been provided within the required timeframe but had not seen the letter referred to by the applicant's representative dated 5 April 2013. The case management discussion on 2 October 2020 was continued to allow the Applicant's representative to produce the letter she had referred to dated 5 April 2013.

4.At the case management discussion on 2 October 2020 the Respondent's representative Mr Alexander referred to a letter which he had lodged with the Tribunal dated 24 September 2020. In this letter he explained how the lodging of the deposit complied with the transitional provisions within the Regulations. The tenancy deposit had been taken at the start of the tenancy on 24 October 2007. The tenancy continued after its initial period on a two monthly basis by virtue of tacit relocation. Regulation 47 of the 2011 Regulations set out a method to ascertain the date by which a deposit which had been taken prior to the coming into force of the Regulations, required to be protected within an approved scheme. In this case since the Tenancy Deposit Schemes became operational on 2 July 2012, the date by which the deposit required to be protected was 30 working days from a tenancy renewal date which fell between 3 and 9 months of the schemes becoming operational, all in terms of Regulation 47(a).In the case of this tenancy it renewed on 24th October 2012 and as such the "30 working days" date by which the deposit required to lodged within an approved scheme was 5th December 2012.Mr Alexander pointed to the written confirmation he had lodged with the Tribunal from Safe Deposits Scotland which suggested the deposit was received by them on 3rd December 2012. After discussion the Applicant's Representative, Mrs Jane Davidson, accepted that Regulation 3(a) had been complied with by the Respondent in that the deposit had been paid to the scheme administrator of an approved scheme within the required period in terms of the transitional provisions under Regulation 47 the 2011 Regulations.

5. The issues which were discussed at the second case management discussion on 6 November 2020 related to two matters. The first of these was whether the terms of Regulation 3(b) had been complied with in relation to this tenancy in respect of the provision of information required under Regulation 42 to the tenant within 30 working

days of the beginning of the tenancy. In addition at the first case management discussion Mrs Davidson had raised the fact that the Applicant's deposit had moved between the deposit scheme providers in 2019 and had been moved back to the original scheme in 2020. She indicated this had been done without notification to the Applicant on each occasion. She questioned whether these movements of the deposit came within Regulation 3 and queried if this was a breach of the requirement to give information within a particular timescale. In response Mr Alexander indicated that the Applicant's deposit was protected at all times and that his firm had moved all of the deposits they had lodged for tenants from one scheme provider to another in 2019, for business reasons, but in 2020 these deposits had been moved back to the original deposit scheme provider as they had not been satisfied with the levels of service of the provider to which they had switched. He also advised that although his understanding was there was no legal requirement to notify tenants of a move of deposit held from one scheme to another, notification was done as a matter of courtesy. He indicated the Applicant would have received a letter in March 2019 when the deposit was originally moved and an email in 2020 when it was moved back to the original scheme provider. He said that prior to 2020 his firm had not held an email address for the Applicant and had corresponded by letter. He could not produce an actual letter but had produced templates. He explained that due to the number of tenants whose deposits were held within an approved deposit scheme provider, a bulk mailing system was used which sent a letter to those on the list of names. He was adamant that every tenant whose deposits was held were notified of the move from one scheme to another as a matter of courtesy Mrs Davidson was equally clear on behalf of the Applicant that there had been notification to the Applicant in relation to the change of deposit provider either by letter or by email.

6. The issues which were therefore taken forward to be determined at a hearing were whether the Respondent had complied with the terms of Regulation 3 (1) (b) of the 2011 Regulations in relation to the provision of information required under Regulation 42 within the prescribed timescale, and whether the moving of the deposit which was already protected within an approved scheme from one provider to another imposed a duty on a landlord in terms of Regulation 3 to give information to the tenant regarding that move. If the regulations imposed such a duty on a landlord had this been complied with in relation to this application? A Hearing was fixed for 17 December 2020.

7. At the hearing on 17 December 2020 Mrs Davidson again represented the Applicant and Mr Alexander represented the Respondent. Both parties gave evidence to the Tribunal. For the Respondent evidence was also lead from a Mr David Gibb.

8. At the hearing the Tribunal had sight of the tenancy agreement, an end of tenancy email from DJ Alexander, and a detailed list of productions from the Applicant's representative numbered 1 to 6. These numbered productions were the Respondent's written representations in a letter dated 8 September 2020 to the

Tribunal, a letter dated 14 September 2020 from the Applicant's representative to the Tribunal, the Tribunal's first case management discussion note, the Respondent's response to the Tribunal's direction contained in a letter dated 29th of October 2020, the Tribunal's second case management discussion note and an Appendix with the productions intended to be referred to by the Applicant's Representative. On behalf of the Respondent the Tribunal had all of the letters lodged with the Tribunal by the Respondent's representative, correspondence from an approved tenancy deposit scheme provider, template letters, tenancy deposit certificates and template letters relating to the movement of a deposit from one scheme provider to another.

9. The Applicant's representative Mrs Davidson gave evidence to the effect that she believed that the information required in terms of Regulation 3(a) of the Regulations had not been provided within the correct timescale as set out in the Regulations. She pointed to the letter which her mother, the Applicant had received dated 5 April 2013 which was Production f within her appendix. She pointed to the Respondent's letter of 8 September 2020 which referred to pro forma emails sent to tenants. She referred to template letters lodged by the Respondent which again referred to emails apparently sent when deposits were transferred from Safe Deposits Scotland to My Deposits Scotland. She referred to the fact that the correspondence suggested emails were sent confirming that deposits were moving and moving back. Her position was that tenants without an email address (which was the position of her mother prior to 2020) appeared to have fallen off the notification arrangements. She suggested that the process within the firm was unable to cope, was perhaps a poor process and pointed to the fact that the Respondent could not produce the actual letter sent to tenants but could provide only a pro forma letter. She specifically referred to the first pro forma letter provided by the Respondent's representative, which suggested that deposits were transferred into My Deposits Scotland. She referred to the fourth paragraph and noted that this specifically indicated that the tenant was receiving an e mail on this matter.

10. Mrs Davidson indicated that her mother, Mrs Jean Davidson, the tenant in respect of the agreement, had been responsible for her own correspondence until she, Mrs Jane Davidson taken this over when her mother went into hospital in November 2019. Mrs Davidson said that she was in sole charge of her mother's correspondence and she was certain that there was no letter received in December 2012 relating to the information which was required to be given to a tenant at the time the deposit was lodged within an approved scheme. She indicated that she had gathered up all of her mother's papers and was clearing out when she found the letter of 5 April 2013. She said that her mother had been particular in her dealings regarding the tenancy and had retained the tenancy agreement and other correspondence regarding maintenance. She also had bank statements which her mother had retained. She had also found the Safe Deposits Scotland certificate in relation to the payment of the deposit into a scheme. She accepted that it was possible that the letter had been received and that there was maybe something missing but given the other documents which her mother had kept, the important documents regarding the tenancy, she was of the view that had the letter giving the information required by Regulation 42 been received in early December 2012, that this would have been found by her when she was clearing her mother's

correspondence. She accepted in relation to the letter dated 5 April 2013 which she indicated had been received, that this could have had attached to it the relevant prescribed information even although she did not have this attachment to the letter and had not found this.

10. On the second point regarding the transfer of the deposit between schemes and then the transfer back to the original scheme in 2020 Mrs Davidson indicated that she would make representations on this point at the end of the evidence.
11. Mr Alexander gave evidence to the Tribunal on behalf of the Respondent. He indicated that at the time the deposit schemes had come into operation in 2012 his firm were dealing with around 5000 properties. A number of tenants had no email address. He particularly remembered a number of tenants in a block in the Corstorphine or Colinton area of Edinburgh, around 400 tenants who had no email address, and these tenants were corresponded with by letter. He therefore said it was not uncommon for his firm to have to correspond with tenants by letter.

12. Mr Alexander's position was that since 2012 no one had ever complained to his firm in their capacity as a letting agent managing properties that a deposit had not been lodged on time or that they had not been supplied with the required information.
13. On the second point raised by the Applicant's representative he said that the legal advice he had taken suggested that he had no legal responsibility to advise tenants when a deposit was moved from one scheme to another. He did say however that if there was a change in the scheme in which the deposit was held correspondence was sent to tenants as a matter of courtesy.
14. Mr Alexander referred to the witness David Gibb whose evidence was still to be heard by the Tribunal. He indicated that Mr Gibb was now in charge of one of the approved tenancy deposit schemes and said that Mr Gibb would confirm to the Tribunal that the deposits held on behalf of the Applicant and all other tenants did not come back to DJ Alexander when they were moved from one scheme to another, but went straight from one scheme to another. His position was that they were protected at all times that they were held. He explained for the benefit of the non-legal member of the Tribunal who had not been present at the case management discussions that all of DJ Alexander's deposits were originally held by Safe Deposits Scotland. The business wanted to operate in England and Safe Deposits Scotland did not cover that geographical area at that time. He said this was the reason why all of the deposits were moved, but the decision was taken to move the deposits back and this was done in 2020. It was put to Mr Alexander that the correspondence he had lodged in relation to these moves between schemes, in the form of templates, referred to the fact that there was a legal requirement to inform tenants of any changes. He indicated that he had not been responsible for the wording but could not find any onus on the landlord to inform tenants of change. He was asked if his firm had a housing management system which recorded all incoming and outgoing correspondence and issues regarding tenancies. He explained that they had not had such a system at the relevant time and that Mr Gibb who was still to give evidence to the Tribunal would be better placed to discuss the systems in place. He was

adamant that the letter issued in April 2013 suggesting that deposits had just been lodged was an error. He had explained he said, in a letter to the Tribunal that this had been a system error at the end of the tax year which generated a number of letters in error. He was not in a position he said to show the actual letter which would have been sent to the Applicant at the time when her deposit was lodged within the approved scheme in December 2012, giving the required information, but was adamant that this would have been sent within the required timescale as set out in the Regulations.

15. Mr Alexander reiterated that in the eight years since this deposit had been lodged his firm had never been late in lodging a deposit. He said there had been a change of system and that his firm had done what was legally required of them. He said it was not reasonable eight years later to come forward and suggest that a letter had not been provided.

16. The Tribunal then heard from a David Gibb, currently employed as the business development manager at My Deposits Scotland, one of the approved tenancy deposit scheme providers. Mr Gibb advised that he had worked at DJ Alexander for 13 years as head of the accounts and property support teams. He was responsible for accountancy functions and back office tasks at the firm he said. He recollected that at the time when the tenancy deposit schemes became operational DJ Alexander held a substantial amount of deposits. He also confirmed that he was not aware of any tenant in the eight years since the schemes became operational suggesting that the correct communication had not been sent to them at the correct time. He described DJ Alexander as Scotland's leading agent in this area. He explained that the information required under Regulation 42 of the Regulations was sent to all tenants. He said that the normal method was by email, giving a copy of the Deposit certificate and an information template which was populated with the relevant information for the tenancy. He accepted that some tenants had no email address. He remembered one client who had around 500 tenants, the majority of whom did not communicate by email. He indicated that these people were communicated with by having their details input into a mail merge document. He said those without emails were treated differently. He described that it was possible that someone could have received a second letter in error. At the end of 2012 the firm had migrated its records from an old software system to a new system. This change was not supported by the previous system provider and the staff were required to make transfers manually using spreadsheets. He indicated that in May 2013 letters were being sent manually. He said there was scope that someone could have received a second letter in error. He explained that at the end of the tax year the wrong template could have been picked. He said that he expected that if someone had mislaid the original letter that they would have called the firm asking for a copy. A copy which was provided later would give the date when it was created and not the original date. He explained that the firm required to change their system provider to ensure that legal requirements were met.

17.He explained that information was taken from the old system, put on to an Excel spreadsheet then put into the mail merge document in a word document. This was

done by temporary staff. He said there was a possibility that the wrong document had been selected and generated. He remembered the timeframe when this was happening. It was a very busy time and not without its challenges. He referred to the period between 1 December 2012 and and 22 May 2013 as being the period when the migration took place. He said that this was imprinted on his memory. He explained further in his evidence that the original system used by DJ Alexander didn't keep a copy of the letters which were generated for clients and as such there was no audit trail for the firm. They were keen to ensure that this was resolved and the existing system provider could not provide this audit trail and this was the reason for the change. Mr Gibb indicated that the original system provider was very upset that the firm was leaving them to go to another provider and gave them no support for the change process. They had to rely on extracting data manually. Despite what he said about the time being challenging and temporary staff being used to assist in the movement of the data he said that he had personally ensured that everything was sent out to every tenant as required. He said that this had involved a huge undertaking of going through records of every tenancy that was dealt with by the firm. He explained to the Tribunal that the original IT system did not keep a record of the letter sent and letters ultimately had to be scanned and linked to the various tenancies. He suggested that the original IT software provider did not simply fail to support the migration to a new system but had tried to sabotage it. He said the tenants would have had letters scanned in but he was not now in a position to recover them as the original system did not link a document folder to a particular property. The new system provided an audit trail which was required for compliance reasons.

18. Mr Gibb considered the possibility that a tenant could have been missed in this manual change over. He did say he remembered sitting signing many letters. He was prepared to accept that 1 could have been missed but not 10. He recalled checking every single tenancy to ensure deposits were lodged and information was given to tenants timeously. In contrast he said the new system recorded the letter which was sent to the tenant and information as to when it was issued to them. He indicated he could not give evidence regarding the position in 2020 as he left the firm on 31 December 2019. He was however clear that for tenants who did not have email addresses,letters were generated for them and that this was not an uncommon practice. On further questioning he indicated that he taught himself to operate mail merge and export data himself,and he generated letters to tenants He said he was confident that the data he generated had covered everyone for whom the letter was required. He was confident that in December 2012 any tenant whose deposit was being protected would have received a letter confirming that from DJ Alexander and also giving the prescribed information in terms of regulation 42 within the required timeframe.

19.in relation to the process whereby tenancy deposits were moved between schemes, he was able to confirm that these did not come back to DJ Alexander at any time and he indicated that a deposit could not be 'unprotected'. When asked about the difference between the date when a deposit was moved to a scheme and the date when the scheme said it had received the deposit, perhaps a period of some three days, he said that this was probably accounted for by the banking

system and the move from one scheme to another in the banking network. He confirmed in relation to the migration between the original IT system held at DJ Alexander and the new system which provided the audit trail he had not checked the work of staff but had been primarily responsible for ensuring that Regulations 3 and 42 were complied with. He was confident this had been done he also confirmed that during his time in the role at DJ Alexander this was the regulatory framework that he worked within, that is the requirements of Regulations 3 and 42 only of the 2011 regulations.

20. The tribunal heard representations from both parties at the end of the evidence. For the Applicant Mrs Davidson indicated that it was clear that the issue around whether her mother had been given information as required in Regulation 42 related to a timeframe within the firm when there was a changeover in the process, much of which was being done manually and she said there was a reasonable possibility that the tenant who was to receive a letter in particular and not an email could have been missed. She pointed to the correspondence which had been exhibited by the Respondent which was clearly designed for tenants on email.

21.In relation to the second issue her position was that a landlord does have a duty in terms of the Regulations to inform a tenant of what has been done where a deposit is moved from scheme to scheme. In the case of the Applicant's deposit she pointed to the terms of Regulation 42 to inform of a change in arrangements regarding the deposit i.e. if it is moved from one scheme to another. She also pointed to Regulation 43 which suggested that if the required information to be given by a landlord becomes inaccurate then such a person must ensure that revised information is provided. Mrs Davidson's submission was that Regulations 42 and 43 had to be read together with Regulation 3 and in doing that she said that this meant that when a landlord moves the deposit from one scheme to another, Regulation 3 is triggered and there is a requirement to advise the tenant of the change in scheme arrangements within 30 working days of the transfer. Mr Alexander for the Respondent indicated that he did not accept there was such a duty but in any event he had provided the information as a matter of courtesy to all tenants when their deposits were moved from one scheme to another.

Findings in Fact

22. The applicant and the Respondent entered into a tenancy agreement at the property with effect from 24 October 2007.

23.This tenancy was a relevant tenancy as set out in Regulation 3 of the 2011 Regulations.

24. The rent payable was £450 per month in advance and the Applicant paid £550 by way of deposit.

25. The tenancy initially ran from 24 October 2007 until 24th of April 2008 and then continued on a two monthly basis by way of tacit relocation.
26. The tenancy ended on 23 July 2020 and the Applicant's deposit was repaid to her.

27. Since the Applicant's deposit was paid to the Respondent's agent prior to the coming into force of the Tenancy Deposit Schemes (Scotland) Regulations 2011 it is subject to the transitional provisions as set out in Regulation 47 as to the timescale for protecting the deposit in an approved tenancy deposit scheme and the provision of required information.

28. The tenancy deposit paid by the applicant to the Respondent's agent required to be protected by 5 December 2012 in terms of Regulation 47 of the 2011 Regulations. It was paid into an approved tenancy deposit scheme provider on 3 December 2012.

29. The duty on the landlord in terms of Regulation 3 of the 2011 Regulations to provide the prescribed information under Regulation 42 to the Applicant was to be complied with by 5th December 2012.

30. At that time and until May 2013 DJ Alexander, the letting agent dealing with the tenancy on behalf of the landlord, were migrating from one IT software package to another. This meant that data held by the firm had to be manually entered into an Excel spreadsheet then placed into a mail merge system which then generated letters to tenants giving them the required information.

31. The process of manually transferring information and ensuring that the terms of Regulation 3 were complied with by DJ Alexander at the relevant time, was primarily dealt with by Mr David Gibb who was then Head of Accounts and Property Support teams at the firm. He personally along with a number of staff went through every tenancy record held by the firm and ensured that deposits were placed timeously within an approved tenancy deposit scheme and that the information required under Regulation 42 was given to all tenants during this period. As a result of this process it was his view that the Applicant in this case would have received a letter giving the information required under Regulation 42 within the 30 working day period as required by the Regulations.

32. The deposit paid by the Applicant in this case was moved from one deposit scheme to another in 2019 and then returned to the original deposit scheme in 2020. The first transfer was made for business reasons as the firm of DJ Alexander wished to expand into dealing with deposits held for properties in England. All deposits held by them were moved from one scheme to another as the original provider did not deal with deposits for properties in England at that time. Due to dissatisfaction with the level of service given by the provider to which the deposits were moved, in 2020 deposits were moved back to the original deposit scheme provider.

33. In what was described as a matter of courtesy DJ Alexander advised all tenants including the Applicant by letter or email when their deposit was moved from one scheme to another in 2019 and also in 2020 when it was when the deposits were returned to the original deposit scheme.

34. The Applicant's deposit from the time it was first taken was protected at all times within a scheme until it was repaid. It was never returned to DJ Alexander during the period when it should have been protected.

35**.** Regulation 43 of the Regulations imposes a duty on a landlord who has required to give information under Regulation 42 and this has become accurate to ensure that revised information is provided. There is no timescale within the Regulations for provision of this updated information and this does not form part of the duty under Regulation 3 of the 2011 Regulations.

Reasons for decision

36.The tribunal heard a good deal of evidence in relation to this application. There were only two issues that required to be considered at the hearing given that the Applicant's representative had earlier accepted at the case management discussion stage that the deposit had been protected timeously.
37.The first issue was whether the information required under regulation 42 to be provided by a landlord to a tenant within the timeframe set out in Regulation 3 of the Regulations had in fact been provided. The Applicant's representative had traced certain documents in relation to the tenancy when she took over responsibility for all of the Applicant's correspondence in November 2019. The letter concerned was sent in December 2012. It was not in dispute that a letter had been sent in April 2013 which would have had the prescribed information. This letter had been received by the Applicant but was said by the Respondent's representative to have been generated an error.
38. Given the passage of time and the evidence heard by the Tribunal regarding the system which was in place at this time and the migration to a new system which required lengthy manual process to be adopted, it was perhaps not surprising that the actual letter sent to the Applicant could not be provided. The Respondent had provided a template and lead evidence as to the manual process which was adopted to ensure that deposits were protected on time and the required information was given timeously. The Applicant's representative quite properly pointed to the fact that the firm seemed primarily to cater for those with whom they were corresponding by email and submitted that given the challenging nature of the manual handover from one IT software system to another, it was perfectly possible that a letter to the Applicant in this case had simply not been provided. The Tribunal accepted the

evidence of Mr Gibb on this point. He did not seek to minimise the undertaking nor suggest that it was not possible that someone could have been missed for whom a letter should have been provided. He did however describe in detail how he taken responsibility for the task and how he had ensured that every tenancy from which the firm held records was checked by him and he recollected signing many letters to tenants giving the required information. The Tribunal accepted his evidence in its entirety and found on the balance of probabilities that although the letter could not at this stage be produced that the Respondent did send a letter to provide the information to the Applicant within the required 30 working day period which expired in December 2012. In making this finding the Tribunal accepted that both parties were genuine in their belief regarding the provision of information. Mrs Davidson the Applicant's representative was very clear that she had found only certain information when she had been clearing out at the property and had taken responsibility for the Applicant's correspondence.The tribunal accepted that she could not find a letter from December 2012 giving the required information. Mrs Davidson was also clear that her mother was particular in relation to the tenancy and had retained the tenancy document itself and correspondence in relation to maintenance. At no time did she suggest that the correspondence she had gathered was exhaustive of everything that had been provided to her mother. Given Mr Gibb's evidence as to the process that was adopted in order to inform tenants by letter, the Tribunal was of the view that it was more likely than not that the information had been provided to the Applicant in this case as required by the Regulations.

39. In relation to the second issue raised by the Applicant 's representative as to whether the moving of a deposit from one scheme to another within the period of protection gave rise to an obligation in terms of Regulation 42 to notify a tenant of the change in arrangements each time the deposit was moved, the Tribunal required to consider the Regulations.

Regulation 3 is as follows:-

3.—(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.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A "relevant tenancy" for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

(a)in respect of which the landlord is a relevant person; and

(b)by virtue of which a house is occupied by an unconnected person,

unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.

Regulation 42 is as follows :-

42.—(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).

(2) The information is—

(a)confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;

(b)the date on which the tenancy deposit was paid to the scheme administrator;

(c)the address of the property to which the tenancy deposit relates;

(d)a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;

(e)the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and

(f)the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.

(3) The information in paragraph (2) must be provided—

(a)where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or

(b)in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.

Regulation 43 is as follows :-

43. Where information required to be provided by the scheme administrator under regulation 22 or by the landlord under regulation 42 becomes inaccurate the person required to provide that information must ensure that revised information is provided.

40. The Tribunal considered the terms of these Regulations and in particular whether anything in Regulation 43 could affect the duties set out in Regulation 3. The Applicant's representative argued that the requirement to provide revised information when information already provided became inaccurate, triggered the duty in Regulation 3 at a time when a deposit was moved from one scheme to another. The Tribunal did not agree with that interpretation of the regulations. In looking at Regulation 3 it appears clear that the duties imposed by this Regulation on a landlord relate to a landlord who receives a deposit at the beginning of the tenancy and that these duties are to pay the deposit into an approved scheme and to provide information required under Regulation 42 within the period of 30 working days from the start of the tenancy.

41.Regulation 42 sets out the information which must be given to a tenant within the timeframe of 30 working days from the start of the tenancy. The Applicant's representative suggested that regulation 42(3)(b) could be construed to cover a deposit that was moved from one scheme to another. The Tribunal considered this and did not reach the same conclusion as the Applicant's representative. It appears to the Tribunal that Regulation 42(3)(a) covers the situation where the tenancy deposit is paid at the start of the tenancy and Regulation 42(3)(b) covers a situation where the landlord receives a deposit later than the start of the tenancy. It would seem that this is a logical interpretation to allow a landlord who receives a deposit late, the same period of 30 working days to pay the deposit into an approved scheme.

42.On consideration of Regulation 43 the Tribunal accepts that it does suggest that a landlord who has provided information under Regulation 42,which information becomes inaccurate, must ensure that revised information is provided. This would appear to cover the situation where a deposit is moved from one scheme to another as the location of the deposit is part of the information that must be required under Regulation 42. However the Tribunal specifically notes that this section gives no time limit for the provision of such information nor does it suggest that this forms part of the duty under Regulation 3. That is an important point because the jurisdiction of the Tribunal in relation to its ability to make a sanction is restricted only to a breach of Regulation 3 of the Regulations. The Tribunal has already indicated that its interpretation of the relevant part of Regulation 3 suggests that this Regulation relates to the payment of a deposit into an approved scheme at the beginning of the

tenancy or within 30 working days of the deposit being received by the landlord. For this reason, the Tribunal while it may take the view that Regulation 43 does impose a duty to provide updated information, is of the view that this is not a matter which could come within the jurisdiction of the Tribunal in relation to Regulation 3. The Tribunal does not therefore consider further whether any duty on a landlord in terms of Regulation 43 was not adhered to in this case as this is outwith its jurisdiction to consider sanctioning a landlord for a failure to comply with the duties set out in Regulation 3.

43.The Tribunal therefore found that in terms of Regulation 3 of the Regulations not only was the deposit protected timeously in terms of the transitional provisions but that the requirement to give information timeously in terms of Regulation 42 was satisfied and that the deposit was protected at all times.

Decision

The Tribunal found that was no failure by the Respondent to comply with the duties in Regulation 3 of the 2011 Regulations in relation to this Application therefore the Application for sanction against the Respondent was refused.

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

_____ ____17.12.20_____

Legal Member/Chair **Date**