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 3 and 10 of the Tenancy Deposit (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/20/1708

Re: Property at 1/2, 13 Whitehaugh Drive, Paisley, PA1 3PG ("the Property")

Parties:

Mr Adam Bowman, 1/2, 13 Whitehaugh Drive, Paisley, PA1 3PG ("the Applicant")

Mrs Nicola Rowley, 170 Southbrae Drive, Glasgow, G13 1TX ("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 has failed to comply with the duties set out in Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and imposes a sanction in the sum of £660 on the Respondent in respect of this failure.

Background

This is an application under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 requesting sanction on a landlord for failure to comply with the duties set out in Regulation 3 of the Regulations.

The Application was lodged with the Tribunal on 13 August 2020 and was accepted by the Tribunal on 19 August 2020. The Tribunal fixed a case management discussion for 2nd October 2020.

The case management discussion was attended by the Applicant Adam Bowman, the Respondent Mrs Nicola Rowley and her representative Mr Martin Rowley, her husband. The Tribunal had sight of the application, a copy of a tenancy agreement, correspondence from Safe Deposit Scotland and email correspondence to the Applicant from Mr Martin Rowley. In addition the Respondent Mrs Nicola Rowley had lodged a letter dated 21st September 2020 setting out her position together with a number of emails from the Respondent to Mr Martin Rowley. She had also lodged a document in relation to the payment history for the rent of the property.The Respondent accepted the failure to pay the deposit into an approved scheme as required by the Regulations in advance of the case management hearing.

There was no dispute between parties that this tenancy was an ongoing short assured tenancy which had commenced on 29 June 2017 for a period of six months and in terms of the tenancy agreement continued after the initial six months from month to month. The monthly rent payable in advance was £440 and a deposit in that sum had also been paid at the start of the tenancy.

Mr Bowman told the Tribunal he had asked the Respondent's representative Mr Rowley by email in July 2020 if his deposit was protected in one of the approved deposit schemes. He had been advised by Mr Rowley by email of 28 July 2020 that there was no requirement in his lease for that to occur and the deposit was safe within a bank account. Mr Bowman then drew the Respondent's attention to the Regulations and Mr and Mrs Rowley placed the deposit within one of the approved schemes within 2 to 3 days of that email exchange. Mr Bowman received a letter from Safe Deposits Scotland dated 31 July 2020 confirming that the Deposit had been lodged in that scheme. Mr Bowman pointed out that he should not have had to advise the landlord of the obligation to protect the Deposit. He had received an email from Mr Rowley confirming the protection of the deposit but no letter containing all of the information referred to in regulation 42 of the Regulations within the time period required in terms of Regulation 3(b).

The Applicant was seeking the maximum sanction available ie three times the deposit paid and said he felt the matter was serious given that the deposit had been unprotected for over three years and he had not known where the deposit had been other than an e mail from Mr Rowley in July 2020.He also referred to the fact that he had required to bring the Regulations to the attention of the Respondent and Mr Rowley which he should not have required to do.

For the Respondent Mr Rowley indicated that it was accepted that the deposit had not been paid into an approved scheme. He pointed to the letter which Mrs Rowley had

submitted to the Tribunal. He explained that they were not professional landlords, they had rented out three properties which were for their pension provision, for a period of some 15 years. When asked by the Tribunal he said that neither he nor Mrs Rowley belonged to any landlords association nor did they obtain assistance from a property management company to manage their tenancies. He said that they had tried this early on but their experience of this had been poor. He said they had genuinely been unaware of the requirement to place a deposit within the scheme or to give the information in terms of Regulation 3. He pointed to the fact that when the Applicant had brought this to their attention he had acted very quickly whilst on holiday with Mrs Rowley and their family, and the deposit had been protected in a scheme within 2 to 3 working days. He also advised the Tribunal that he had taken steps to make sure that the deposits taken in respect of their other tenancies were now protected.

He asked the Tribunal to regard this as a genuine oversight on their part. Mrs Rowley confirmed that she had attended events run for registered landlords but accepted that she had completely missed the requirements upon her as a landlord in relation to protection of deposits and giving of information.

The Tribunal felt it had sufficient information in order to make a decision and that the proceedings had been fair.

The Tribunal found that the Respondent had failed in her duties in terms of Regulation 3 of the 2011 Regulations in that she had not protected the Applicant's deposit within an approved scheme within the relevant time period and had not provided the information requested in regulation 3(b) within the appropriate timeframe.

Findings In Fact

1.The Applicant and Respondent entered into a tenancy agreement at the property commencing on 29 June 2017. This was a short assured tenancy which after the initial period of six months continued on a monthly basis and is continuing.

2.This tenancy is a relevant tenancy within the meaning of Regulation 3 of the 2011 Regulations.

3.At the start of the tenancy the applicant paid a deposit of £440 in cash to Mr Rowley who accepted this on behalf of the Respondent.

4. When the Applicant enquired as the whereabouts of his deposit in July 2020 he was advised by Mr Rowley on behalf of the Respondent that it was within a bank account and there was no requirement to lodge it within an approved deposit scheme.

5. The Applicant Mr Bowman advised Mr Rowley of the requirements under the 2011 Regulations by email on 28 July 2020.

6. The deposit was protected within one of the approved schemes by Mr and Mrs Rowley by 31 July 2020.

7. The deposit paid by the Applicant was not protected in an approved scheme as it should have been for a period of over three years.

8. The applicant did not receive the information required in terms of Regulation 3(b) of the 2011 Regulations within the appropriate time period referred to within the Regulations.

9.The Respondent and her husband have rented properties for some 15 years and have three rental properties including the property referred to this application. They choose to manage these themselves and were simply unaware of the requirement to use a deposit scheme and the duty to give information to a tenant in terms of Regulation 3 of the 2011 Regulations.

Reasons for Decision

The Tribunal was satisfied that the Respondent had failed to comply with the duties set out in Regulation 3 of the 2011 Regulations. She had failed to ensure that the deposit was paid into an approved deposit scheme within 30 working days of the start of the tenancy and failed to give information to the Applicant in terms of Regulation 3(b) of the 2011 Regulations. The Tribunal required to consider what sanction should be made in respect of the failure to comply with the duties under the Regulations. The Tribunal had regard to the case of ***Russell - Smith and others v Uchegbu [2016] SC EDIN* 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 at the end of the day the exercise by the Tribunal of its judicial discretion is a balancing exercise.

The Tribunal weighed all of the factors and found it to be of significance that the deposit was unprotected for a period in excess of three years.It was also of concern that the Applicant, the tenant, had required to bring the terms of the Regulations to the attention of the Respondent and her husband. Other factors to be taken account here were that the Respondent and her husband have other rental properties, a total of three and have chosen to manage these themselves. They appeared to be unaware that the Regulations would apply to this tenancy and the Tribunal accepted that this had been their understanding before the Regulations were drawn to their attention.. In fairness to them when the failure to comply was pointed out to them the Rowleys took immediate action and protected the Applicant's deposit. Mr Rowley indicated to the Tribunal that he had taken steps to ensure that other deposits taken in respect of their other rental properties were protected now. The Respondent had accepted her failure to comply with the duties in advance of the case management discussion.

Mention had been made in written representations and by parties at the case management discussion of arrears of rent at the property which were owed by the Applicant. The Tribunal did not view these to be of relevance to the question of whether the duties of the landlord had been complied with as regards the deposit. The Tribunal also indicated that the the amount of any sanction was not a matter of compensation for the tenant Applicant.

Having taken all matters into consideration the Tribunal was of the view that this was not a case of wilful disregard of the regulations but a genuine if significant mistake by the Respondent. In all of the circumstances the Tribunal determined that the sanction would be one and half times the tenancy deposit namely £660.

Decision

The Tribunal determined that the Respondent was in breach of her duties in terms of Regulation 3 of the Tenancy Deposit Regulations (Scotland) 2011. The Tribunal sanctioned the Respondent in the sum of £660.

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

Legal Member/Chair	**2.10.20** **Date**