



**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/21/3145**

**Re: Property at Flat 2-2, 84 Minard Road, Glasgow, G41 2EQ (“the Property”)**

**Parties:**

**Miss Lorela Hoxha, 6/7 Robertson Avenue, Edinburgh, EH11 1PT (“the Applicant”)**

**Lets Direct (Scotland) Ltd, 605 Cathcart Road, Glasgow, G42 8AD (“the Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

This was an application dated 20<sup>th</sup> December 2021 brought in terms of Rule 103 (Application for order for payment where landlord has not paid the deposit into an approved scheme) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended. The application was made under Regulation 9 of the *Tenancy Deposit Schemes (Scotland) Regulations 2011* (“the 2011 Regulations”).

The Applicant sought payment of compensation in respect of an alleged failure by the Respondent to pay the deposit she provided of £925.00 in relation to the tenancy agreement into an approved scheme within 30 days of receipt of that sum.

The Applicant provided with her application copies of a private residential tenancy agreement and various screen shots and mobile phone text messages.

The Respondent has been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 28<sup>th</sup> January 2022, and the Tribunal was provided with the execution of service.

Prior to the Case Management Discussion, both parties submitted information to the Tribunal.

A Case Management Discussion was held on 9<sup>th</sup> March 2022 by Tele-Conference. The Applicant participated, and was not represented. The Respondent did not participate, and was not represented.

The Tribunal clerk contacted the Respondent to enquire if it intended to participate in the Case Management Discussion. The Respondent explained that it was unaware of the Case Management Discussion as a result of the fact that the member of staff dealing with it had been off work with Covid for the previous two weeks. The Respondent asked that the Case Management Discussion be continued to allow it to participate.

The Tribunal explained the position to the Applicant, who accepted that it would be unfair to proceed in these circumstances.

The Tribunal noted that the Applicant has provided the Tribunal with various screen shots of documents in an e-mail of 1<sup>st</sup> February 2022. However, the copies provided had been cropped to one side, such that much of the important text was missing. The Applicant confirmed she would re-submit that information in full.

The Tribunal noted that both parties in their submissions focussed on the correct identification of the letting agent in this matter. The Tribunal observed that this application is brought against the landlord of the Property, and for that reason it is of no great significance or importance as to which organisation managed the Property.

In these circumstances, the Tribunal considered that it was in the interests of justice to continue the Case Management Discussion to allow the Respondent to participate in this application.

A continued Case Management Discussion was held on 21<sup>st</sup> April 2022 by Tele-Conference. The Applicant again participated, and was not represented. The Respondent's Miss Leah Smith participated, and was not represented.

Miss Smith explained that she was an administrative employee of the Respondent, and had no authority to make decisions with regard to this application on its behalf. The Respondent's two directors, Mr Iqbal and Mrs Ahmed, had such authority.

Miss Smith explained that after failing to participate in the previous Case Management Discussion due to being absent from work with Covid, Mr Iqbal had

intended to participate in the continued Case Management Discussion. However, both he and Mrs Ahmed were this morning attending the funeral of a family member and neither was able to participate today as a result.

After further discussion, the Tribunal with some reluctance agreed to Miss Smith's request to again continue the Case Management Discussion to enable either Mr Iqbal or Mrs Ahmed to participate. The circumstances are unfortunate, but the Tribunal notes that it is extremely unlikely that it will agree to continue or postpone the further continued Case Management Discussion, and that the Respondent requires to have someone who is authorised to make decisions on its behalf attend the further continued Case Management Discussion.

### **The further continued Case Management Discussion**

A further continued Case Management Discussion was held on 25<sup>th</sup> May 2022 by Tele-Conference. The Applicant again participated, and was not represented. The Respondent's Mr Iqbal participated, and was not represented.

Mr Iqbal explained that the Respondent was the landlord of the Property, and as such accepted that it was legally held responsible for lodging the deposit in an approved scheme. He also accepted that the deposit had been lodged late on 14<sup>th</sup> May 2021. It should have been lodged within 30 working days of the date it was paid by the Applicant on 30<sup>th</sup> July 2020.

Mr Iqbal explained that the Respondent engaged a letting agent, Lets Direct (Southside) Ltd, to act on its behalf in the management of a substantial number of its properties including the Property. The Respondent's letting agent was responsible for amongst other things the lodging of deposits paid by the Respondent's tenants.

In May 2021, the Respondent became aware that its letting agent had not been able to renew its letting agent registration, and had ceased trading. After that occurred, the Respondent became aware after investigation that its letting agent had not lodged the deposit paid by the Applicant in an approved scheme as it should have done.

As soon as the Respondent realised that the deposit had not been lodged, it immediately arranged to lodge the deposit on 14<sup>th</sup> May 2021.

Mr Iqbal accepted that the Respondent was in breach of its obligations with respect to the lodging of the deposit, but submitted that it was as a result of the error of its letting agent that it was in breach, and that as soon as it realised the error it immediately corrected it.

## Reasons for Decision

This application was brought timeously in terms of regulation 9(2) of the 2011 Regulations.

Regulation 3 of the 2011 Regulations (which came into force on 7<sup>th</sup> March 2011) provides as follows:

“(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.”

The Respondent as landlord was required to pay the deposit into an approved scheme. It accepted that it failed to do so.

Regulation 10 of the 2011 Regulations provides as follows:

“If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal -

- (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and
- (b) may, as the First-tier Tribunal considers appropriate in the circumstances of the application, order the landlord to—
  - (i) pay the tenancy deposit to an approved scheme; or
  - (ii) provide the tenant with the information required under regulation 42.”

The Tribunal was satisfied that the Respondent did not comply with its duty under regulation 3, and accordingly that it must order the Respondent to pay the Applicant an amount not exceeding three times the amount of the tenancy deposit.

In the case of *Jenson v Fappiano* 2015 G.W.D 4-89, Sheriff Welsh opined in relation to regulation 10 of the 2011 Regulations that there had to be a judicial assay of the nature of the non-compliance in the circumstances of the case and a value attached thereto which sounded in sanction, and that there should be a fair, proportionate and just sanction in the circumstances of the case. With that assessment the Tribunal respectfully agrees.

In the case of *Tenzin v Russell* 2015 Hous. L. R. 11, an Extra Division of the Inner House of the Court of Session confirmed that the amount of any award in respect of regulation 10(a) of the 2011 Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.

In determining what a fair, proportionate and just sanction in the circumstances of this application should be, the Tribunal took account of the facts that the Respondent

had engaged a letting agent to manage its large portfolio of properties including the Property, that it was unaware that the letting agent had failed to lodge the deposit on its behalf until the letting agent ceased trading, and that upon the letting agent ceasing trading it had swiftly investigated the position, realised that the deposit had not been lodged in an approved scheme as it ought to have been and immediately lodged the deposit, and accepted at the first opportunity before the Tribunal that it was at fault and had contravened Regulation 3 of the 2011 Regulations.

In these circumstances, the Tribunal considered that the foregoing factors did represent mitigation in respect of the compensation to be awarded in the exercise of its judicial discretion.

However, balanced against these mitigating factors, were the fact that the Respondent's letting agent received payment of the deposit on 30<sup>th</sup> July 2020 on its behalf, and it did not comply with its legal obligations as a landlord with respect to the 2011 Regulations, which regulations have been enacted to provide protection to tenants in respect of their deposit and to ensure that they can obtain repayment of their deposit at the conclusion of the lease, and the fact that the period during which the deposit was not lodged in an approved scheme and during which the Applicant did not have the security provided by such lodging was significant (approximately eight months).

Balancing these various competing factors in an effort to determine a fair, proportionate and just sanction in the circumstances of this application, the Tribunal considers that the sum of £925.00 (once the amount of the tenancy deposit) was an appropriate sanction to impose.

## **Decision**

For the foregoing reasons, the Tribunal ordered the Respondent in respect of its breach of Regulation 3 of the 2011 Regulations to make payment to the Applicant of the sum of £925.00 in terms of Regulation 10(a) of the 2011 Regulations.

## **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.

# N Kinnear

25<sup>th</sup> May 2022

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Legal Member/Chair

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Date