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/21/3243

Re: Property at 116 Craigton Road, Glasgow, G51 3RH ("the Property")

Parties:

Miss Silvia-Nicoleta Dulgheru, Flat 10 Eglinton Court, 5 Lethington Avenue, Glasgow, G41 3HA ("the Applicant")

Miss Aleksandra Szwiec, 0/2 8 Kirkwood Street, Glasgow, G51 1QQ ("the Respondent")

Tribunal Members:

Melanie Barbour (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that there had been a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011; and it would make an order for payment of £1,000.00 in favour of the Applicant.

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 and Rule 111 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the 2017 Rules") seeking an order for payment for failure to lodge a tenancy deposit into an approved scheme.

2. The application contained, a copy of the tenancy agreement; evidence of the payment of the deposit; evidence that the deposit had not been placed in any approved schemes; and evidence of when the tenancy had ended.

3. Both parties attended the case management discussion by telephone conference. The respondent had also previously submitted written representations. The applicant had had sight of these written representations.

The Case Management Discussion

4. The respondent's written representations had been received by the Tribunal on 4 March 2022, in it, she had confirmed that she had failed to protect the deposit received from the applicant. She advised that it was done in ignorance and not deliberately or in a bad faith. She further advised that she had always complied with regulations and landlord obligations and only on this one occasion had she failed to fulfil her duty. She advised it was a one-off incident, and she would not fail in this obligation again in the future. She went on that she was a good, respectful and attentive landlord to the applicant and had responded to all of her requests.

5. In oral submission, she advised that she had been aware of the tenancy deposit regulations, but she had not fully understood them. She did advise that she had been aware that she should have lodged the tenancy deposit in an approved scheme. In addition, she had then forgotten to lodge the deposit, and as time passed it had not crossed her mind again. She advised that this was the first time that she had rented out the property. It was the first time she had received a deposit. She had complied with other landlord duties, for example, she was registered and dealt with electrical certificates and the like. This was the only property that she rented out.

6. In relation to the end of the tenancy, she advised that the applicant had left the flat in need of a deep clean, a number of items in need of replacement, as well as some damage to walls and fittings, the costs of which she needed to cover in order to bring the flat to an acceptable standard. In oral submission, she advised that the deposit had not been returned. There had been repairs to be done to the flat which she considered were caused by the applicant.

7. The applicant advised that at the end of the tenancy she had received a text from the respondent about the deposit. The respondent had advised the applicant that there

were various repairs required to be done to the property, she would deduct the costs from the deposit, and she would return £103 to the applicant. The applicant advised that she was unhappy with this and did not agree to all of the items that the respondent was intending to deduct from the deposit. She was also concerned as the respondent did not provide any invoices for the alleged costs she was going to deduct from the deposit. She had sought advice from the Shelter, and they had advised her of her rights to bring this application and told her not to have any further contact with the respondent direct.

8. In addition, the applicant advised that the respondent had been at the property a week before she left, she had inspected the property then and had not raised matters with her then. There had been a broken pane of glass in the door for 4 years, and a broken hob she accepted some responsibility for repair costs for these two items. While the applicant advised that she accepted she owed something for these items, she was not convinced however, that she should have to replace the whole door instead of a pane of glass, which was what the respondent had suggested.

9. The respondent advised that she had not had invoices to hand over when she had contacted the applicant, and in terms of the glass in the door, it was cheaper to replace the whole door rather than a pane of glass. She advised that she had tried to contact the applicant to talk about the costs to be deducted but the applicant had cut her off, only advising her that she was going to the tribunal.

10. Both parties agreed that the tenancy commenced on 22 June 2017; the deposit paid was £450; the tenancy had come to an end on 17 December 2021; the deposit had not been placed in an approved scheme throughout the duration of the tenancy.

Findings in Fact and Law

11. The tribunal made the following findings in fact and law: -

    a. That a tenancy had commenced on 22 June 2017.
    b. The Respondent was the landlord for the property.
    c. The Applicant was the tenant.
    d. That the Applicant had paid the Respondent a tenancy deposit of £450 on around 22 June 2017.
    e. That the tenancy has ended on 17 December 2021.

f. That the tenancy deposit was not lodged with an approved scheme within 30 working days of the tenancy beginning.
g. That the tenancy deposit was not lodged with an approved scheme at any time during the tenancy.
h. That the Respondent had not provided the Applicant with information about the tenancy deposit, as required to do so under regulation 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011
i. The tenancy deposit has not been repaid to the Applicant.

Reasons for Decision

12. The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits, and relevant to this case are the following regulations: -

Duties in relation to tenancy deposits
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.

Sanctions
9.— (1) A tenant who has paid a tenancy deposit may apply to the [First-tier Tribunal] 1 for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit. (2) An application under paragraph (1) must be made […]2 no later than 3 months after the tenancy has ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the [First-tier Tribunal] 1 — (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] 1 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.

13. The Respondent accepted that the deposit had not been paid into an approved scheme in accordance with the terms of the regulations. Therefore, the terms of regulation 10 are engaged, and the tribunal must order that the Respondent pay the Applicant an

amount not exceeding three times the amount of their tenancy deposit. The amount to be paid requires to be determined according to the circumstances of the case, the more serious the breach of the regulations the greater the penalty.

14. In this case, I consider that a sum of £1,000.00 would be appropriate. This is a sum that is slightly more than 2 times the value of the deposit. I consider that this breach was fairly serious, and any penalty should therefore be at the higher end of the scale.

15. In considering what penalty to impose, I have had regard to the verbal and written submissions of both parties.

16. I note that the Respondent accepted that she had received a deposit from the applicant; that she had not placed the deposit in an approved scheme; and that she had therefore breached the tenancy deposit regulations. It was also agreed by the parties that the respondent had contacted the applicant after the tenancy ended about repayment of at least part of the deposit. It would appear clear therefore that she did not intend to retain all of the deposit. I also accepted that the respondent was a fairly new landlord and only had one property that she rented out.

17. Weighed against those facts however was the fact that the Respondent admitted being aware of the regulations and the need to place the deposit in an approved scheme, but despite this, she failed to do so during a 4 and a half year period. She stated that she had forgotten about the deposit during the tenancy. While that may have been the case, she appears to have recalled the deposit when the tenancy came to an end, given that it was her who contacted the applicant to advise that she was retaining part of the deposit as she considered that there were repair and cleaning issues with the property. The applicant disputed these deductions were fair and also advised that they were not supported by evidence.

18. The deposit has not been repaid to the applicant, although I do note that the respondent was going to repay just over £100 of it, however this was after she had made potentially arbitrary deductions to a significant proportion of the deposit. It is the issue of the respondent determining that she was retaining about ¾ of the deposit which I consider most serious in this case. The respondent had full control over the deposit, and the failure to place the deposit into an approved scheme deprived the applicant of a fair and impartial adjudication process to determine the fairness or otherwise of the proposed deductions to the deposit.

19. I consider that it is a serious matter to fail to lodge a tenancy deposit in accordance with the regulations. Orders in these cases impose a sanction on a landlord to try and address a mischief. The regulations are also there to provide both parties with a fair adjudication process if parties cannot agree on what should happen to a deposit at the end of a tenancy such as in this case. I consider that there was a careless disregard for the tenancy deposit regulations and the applicant was deprived of the protection that the regulations seek to establish.

20. For all the reasons set out above, I consider that the breach is serious, and I believe that a sanction of £1000 would be appropriate in this case.

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.

Melanie Barbour

Legal Member/Chair **23 March 2022** **Date**