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 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/22/2316

Re: Property at 2 Meldrum Crescent, Burntisland, KY3 0JJ ("the Property")

Parties:

Miss Sarah Combe, 5 Linton Court, Kinghorn, KY3 9YH ("the Applicant")

Roseanna Lynn MacNeil, 191 Kinghorn Road, Burntisland, KY3 9JP ("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 should pay to the Applicant the sum of £900 having found that the Respondent has breached the duties set out in Regulations 3 and 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Background

1.This is an application under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations and Rule 103 of the tribunal rules of procedure in respect of an alleged failure to comply with the duties required of a landlord under Regulation 3 of the 2011 Regulations.
2. The application was first lodged with the tribunal on 12th July 2022 and accepted by the tribunal on 20th July 2022. A case management discussion was fixed for 30th September 2022 at 2:00 pm.

The Case Management Discussion

3.The Applicant attended the case management discussion and was represented by Mrs Walker of Frontline Fife who was supported by Ms Morrison, also from Frontline Fife. The Respondent attended and represented herself.

4.The Tribunal had sight of the Application, a tenancy agreement, a Form AT5, documents in connection with the ending of the tenancy,a handwritten deposit receipt, emails from tenancy deposit providers, emails between the parties, representations from the Respondent together with photographs and further representations on behalf of the Applicant.

5. Both parties had lodged material in relation to issues concerning the deposit which was still outstanding and had not been returned to the Applicant. The tribunal legal member clarified that both parties and representatives understood that the application before the tribunal related only to the issue of sanction of a landlord in the event there was a failure on the part of the landlord to carry out duties required of them in terms of the 2011 Regulations

6. The Respondent had not had time to consider the final representations lodged on behalf of the Applicant which she had received only on the morning of the case management discussion. The tribunal legal member went through these in turn, and it was noted that these appeared to be responses to the Respondent's representations regarding issues at the property at the end of the tenancy and the question of the return of the deposit. The Respondent was prepared to proceed without taking further time to consider the Applicant's final representations. Both the Respondent and the Applicant's representative accepted that their representations in relation to the issues around the return of the deposit were not directly relevant to the consideration of whether there had been a breach of the 2011 Regulations.

7. The parties had entered into a short-assured tenancy at the property on 20th December 2010. At that time there had been two tenants, but the second tenant ceased to occupy the property in either 2016 or 2017 when the Applicant separated from him. The Applicant continued to reside at the property with her children. The initial tenancy had ended on the 19th of June 2011 and the Applicant's position was that the tenancy had continued rolling over on a six-monthly basis thereafter. The tenancy had been brought to an end by the service of notices in 2022 and the Applicant's position was at the tenancy had ended on the 30th of April 2022.

8. The Applicant's position was that a deposit of £450 was paid at the start of the tenancy and had not been returned. there were issues between the parties as to the return of the deposit and whether they required to be deductions from the deposit.

9. The Applicant had discovered at the time of the tenancy was being brought to an end in the context of discussions regarding the deposit that it had not been protected in an approved scheme at any time and she had not received the required information from the landlord in terms of Regulations 3 and 42 of the 2011 Regulations.

10. The Respondent accepted that a deposit had been paid at the start of the tenancy in the sum of £450. She had been unable to remember whether a month's rent had been paid in advance or if a deposit had been paid but accepted in terms of the handwritten note lodged on behalf of the Applicant that this deposit had been paid. She also accepted that this deposit had not been protected in an approved tenancy deposit scheme. As the deposit had been received prior to the coming into force of the Regulations or the operation of the tenancy deposit scheme providers she had

understood that she was not required to protect the deposit. She had learned that this was not correct around the time when she brought the tenancy to an end and had discussions with the Applicant regarding return of the deposit. She was willing to return half of the deposit, but this was a matter in dispute with the Applicant. The Respondent also accepted that she had not complied with the duties in terms of Regulation 42 of the 2011 Regulations to provide certain information to the tenants. The Respondent did not dispute the start or end date of the tenancy nor that the tenancy had rolled over on a 6 monthly basis and had continued with the Applicant as the sole tenant sometime around 2016 or 2017. The Respondent accepted that she had breached the Regulations and understood that the tribunal required to impose a sanction upon her.

11. The tribunal legal member referred to the Tenancy Deposit Schemes (Scotland) Regulations 2011 and in particular regulation 47 which contains transitional provisions covering deposits taken before the regulations came into force. In relation to this application given that it was agreed that the tenancy appeared to continue by the operation of tacit relocation it would have renewed on a date in December 2012, after the first of the tenancy deposit scheme providers came into operation on 2nd July 2012. The obligation on the landlord to pay the deposit and to provide the information to the Applicant was required to have taken place within 30 working days of the 19th of December 2012. The deposit paid in this application was therefore required to be paid into an approved deposit scheme provider by a date around the end of January 2013. Both parties accepted that the deposit paid ought to have been protected and the required information given to the Applicant within this timescale and that the deposit had been unprotected for a period in excess of 9 years.
12. The Respondent having accepted a breach of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 it then fell to the tribunal to consider what sanction was appropriate.
13. Mrs Walker on behalf of the Applicant requested that the tribunal impose the maximum sanction available, three times the deposit paid, some £1350. She was seeking the maximum sanction on the basis that the deposit had been unprotected for a significant period of time, the tenant had been deprived of the ability to use a deposit scheme dispute resolution service and there were issues between the parties regarding the return of the deposit which was yet to be returned. She also referred to issues with the way in which the tenancy was conducted, the paperwork and delays in relation to matters which were required to be dealt with by the landlord.
14.The Respondent accepted that she had breached her duties as a landlord. She explained that she had been naïve, and this was the first time she had rented out a property. It had been her mother's home and the family had agreed that it would be rented out. She had rented it to the Applicant as she had heard that she needed somewhere to stay. She had believed that she did not require to protect the deposit and at no time in the subsequent duration of the tenancy had this been done. She had realised that the deposit ought to have been protected when discussions started about the deposit at the end of the tenancy. She accepted that a tenancy deposit scheme provider would have offered a dispute resolution scheme and the current issues between the parties regarding the deposit could have been resolved by that independent scheme but her failure to protect the deposit with a provider had prevented the tenant from having that opportunity. The Respondent works part time and does not rent out any other property. She did not accept that the paperwork in relation to the tenancy was deficient and had had assistance in both setting up the tenancy agreement and the subsequent notices requiring the Applicant to remove

from the property. She accepted there had been delays in her dealing with certain matters required for the tenancy, in particular the fitting of interlinked alarms. The Respondent was apologetic for her failures and asked that the tribunal take into account everything that she had said and in particular that she had been naive at the time when the property was rented out.

15.The facts put forward by both parties were not in dispute and the Respondent accepted that she was in breach of the Regulations. The parties were agreed on matters relevant to the facts and issues that the tribunal required to consider.
16. The tribunal legal member was satisfied that there was sufficient information upon which to make a decision and the proceedings had been fair.

Findings in Fact

17. The Applicant and the Respondent entered into a short assured tenancy with another tenant at the property with effect from 20th of December 2010.
18. The other tenant ceased to occupy the property with effect from sometime in 2016 or 2017.
19. The initial short assured tenancy continued on a rolling basis renewing every six months and ended with effect from the 30th of April 2022
20. A deposit of £450 was paid to the Respondent at the start of the tenancy around the 20th of December 2010.
21. The tenancy was a relevant tenancy within the meaning of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
22. The deposit has not been returned to the Applicant and there are issues between the parties as to whether some of the deposit requires to be retained.
23. The deposit paid by the Applicant was not secured by or on behalf of the Respondent in any of the approved tenancy deposit schemes at any time during the tenancy.
24. The information required to be given to the Applicant by the Respondent in terms of Regulations 3 in 42 of the 2011 regulations was not given to the Applicant by the Respondent at any time during the tenancy.
25.The requirement to protect the deposit in an approved scheme and comply with the obligation to provide required information in terms of Regulations 3 and 42 of the Regulations should have been complied with in respect of this tenancy within 30 working days of 19th December 2012.
26. This tenancy was the first occasion on which the Respondent had rented out property and she did not appreciate that the Applicant's deposit required to be protected as the tenancy commenced before the 2011 Regulations came into force and before the deposit schemes were operational.

Reasons for Decision

27. The tribunal have having found that there was a breach of the Regulations, it then fell to the tribunal to consider what sanction should be made in respect of the failure to protect the deposit and give the information required in terms of Regulations 3 and 42 of the 2011 regulations within the required time frame. The tribunal had regard to the case of ***Russell Smith and others against Uchegbu [2016] SC Edinburgh 64.***In particular the tribunal considered 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 in the end of the day the exercise by the tribunal of its judicial discretion is a balancing exercise.

28. The tribunal considered all of the information before it and found there were a number of factors to be weighed in the balance in this application. The first was that the deposit had been unprotected for the entire period of the tenancy, a significant period in excess of nine years and this had deprived the Applicant of the ability to use the deposit scheme dispute resolution service in relation to the return of the deposit. There was a dispute between the parties over how much of the deposit should be returned and the dispute resolution service could have assisted with the current dispute. The information required to be given to the tenant had never been given to the Applicant. As against this the tribunal considered that the Respondent had not rented property before this tenancy had started, she had accepted responsibility for the breach and had set out why it had happened. The tribunal accepted as did the Applicant's representative that this oversight appeared to have occurred through naivety on her part. That said a sanction had to be made as the duties had not been complied with and the tribunal was concerned that the duties had not been complied with for a substantial period of time, for the entire tenancy, and took the view that a sanction at the higher end of the range of possible sanctions was appropriate given the circumstances in the application.

Decision

The tribunal determined that the Respondent should pay to the Applicant the sum of £900 having found that the Respondent had breached the duties set out in Regulations 3 and 42 of the Tenancy Deposit Scheme (Scotland) Regulations 2011.

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

_____	**30.9.22**
Legal Member/Chair	**Date**