



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/22/2790**

**Re: Property at Flat 1/1, 431 Victoria Road, Glasgow, G42 8RW (“the Property”)**

**Parties:**

**Miss Caoimhe Thompson, Miss Rosie Andrew, 1 Greenhaw Manor, Derry, BT48 7FD, Flat 3/1, 21 Carmunnock Road, Glasgow, G44 4TZ (“the Applicant”)**

**Mr Mo-az Ahmed, Flat 2/2, 152 Nithsdale Road, Glasgow, G41 5RB (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the Respondent in the sum of Five hundred and ninety five pounds (£595) Sterling**

**Background**

- 1 The Applicants applied to the Tribunal seeking an order for payment as a result of the Respondent’s failure to lodge their deposit in an approved tenancy deposit scheme.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 20 October 2022.

- 3 On 19 October 2022 the Tribunal received an email from Joanne Simpson of 1<sup>st</sup> Lets (Glasgow) Ltd advising that her firm would represent the Respondent at the Case Management Discussion.

### **The Case Management Discussion**

- 4 The Case Management Discussion took place on 20 October 2022. The Applicants were both present. The Respondent was represented by Joanne Simpson.
- 5 The Legal Member explained the purpose of the Case Management Discussion and the legal test to be applied. She asked the parties to address her on their respective positions. Their submissions are summarised below. For the avoidance of the doubt, this is not a verbatim account of what was discussed at the Case Management Discussion but a summary of those matters relevant to the Tribunal's determination of the matter.
- 6 The Applicants advised that the deposit that they had paid to 1<sup>st</sup> Lets Ltd had not been lodged with a deposit scheme within the statutory timescales. They had paid part of it at the end of 2019 and the remainder when they secured the property in January 2020. They had moved into the property in February 2020. They later found out that their deposit hadn't been paid into a scheme until September 2021. They had received the certificate from the deposit scheme confirming this. The Applicants advised that they had considered moving out of the property in the winter of 2021 and that had prompted them to get in touch with the deposit scheme when they realised that they had not received any information regarding their deposit. The deposit certificate was the first documentary information they had received regarding the deposit.
- 7 In response to questions from the Tribunal the Applicants confirmed that they had received their deposit back from the deposit scheme. They had applied and the Respondent did not respond therefore the deposit was repaid to them after thirty working days. The Applicants also submitted that the contact details provided to the deposit scheme were wrong and the scheme didn't have any contact details for the second named Applicant.
- 8 Miss Simpson on behalf of the Respondent confirmed the deposit had been paid by the Applicants in the stated timeframe. The Respondent had thirty working days to lodge the deposit which gave a deadline of 27 March 2020. At that point Miss Simpson's office had closed down due to the coronavirus pandemic. The deposit had been paid to the Respondent as he would ordinarily deal with the lodging of deposits with the scheme. There was no malice involved, the Respondent always intended on lodging the deposit. When it was brought to his attention he thought he had lodged it but realised he had not. Miss Simpson submitted that there were mitigating circumstances

at the time with the stress of lockdown and the Respondent was unable to see his family at that time.

- 9 Miss Simpson advised that the lateness of lodging the deposit only came to her firm's attention when they received the paperwork from the Tribunal. She had asked the Respondent what had happened. He had offered the Applicants a sincere apology and was prepared to pay them a sum equivalent to one and a half times the deposit in order to settle the matter however the Applicants declined, stating they would prefer to come to the Tribunal. With regard to the incorrect email address, Miss Simpson advised that this was a typing error. It was not a completely different email address. She had contacted the deposit scheme to have it rectified when she discovered the error so that there would be no unnecessary delay. Miss Simpson advised that she had not been notified by the Applicants that the deposit had been lodged late. In response to questions from the Tribunal she confirmed that the Respondent had discovered the oversight when noting an anomaly in his accounting. He had lodged the deposit once this was discovered, it was not in response to any prompting by the Applicants. The Respondent accepted that there was no excuse for lodging the deposit late but did feel there were mitigating circumstances at the time. Miss Simpson confirmed that the Respondent had been a client of her firm for some time and there had never been any issues like this. That was why he had offered the apology and a payment to settle the matter.
- 10 The Applicants advised that Miss Thomson had never been in touch with 1<sup>st</sup> Lets Ltd about the deposit and the error in the contact details provided. She had corrected this herself. In the winter of 2021 there had been problems with the boiler. The Applicants were therefore taking steps to leave the property and wanted to know if the deposit was protected. They accepted that they could have contacted the letting agent or the Respondent at that time but equally the Respondent could have contacted them to explain the situation. He had also failed to give them the prescribed information. The Applicants confirmed that they did not want to settle with the Respondent outwith the Tribunal process. There were other issues with the tenancy, an example being a lack of any gas safety certificate when they took up the property and an issue with the meters that were illegally rigged. They had to sort the latter out themselves with Scottish Power. The gas safety certificate was not provided to them until January 2021. It all made the tenancy quite stressful. The Applicants were therefore keen to sort the matter out formally.
- 11 The Legal Member noted that it was not in dispute that the Respondent had failed to lodge the deposit in time and provide the prescribed information. The issue for the Tribunal to determine was therefore what level of sanction would be appropriate. She asked the parties to address her on this point. The Applicants explained that the deposit had been paid to 1<sup>st</sup> Lets Ltd, not the Respondent, and they were aware that there had been issues with deposits

handled by the firm in the past. It was a repeated pattern of negligence. The Applicants were not here for the money, they felt things needed to be done right by the letting agent and the Respondent. It might have been a genuine error but the Applicants felt a sum equivalent to twice the deposit would be appropriate. The Applicants didn't think the mitigating circumstances were an excuse for the late lodging of the deposit. The deposit had been paid prior to them taking up occupation on 14<sup>th</sup> February, which was prior to lockdown. Whilst the Applicants had details of the tenancy deposit scheme in the tenancy agreement they had no reference number to enable them to find out the details of their deposit.

- 12 Miss Simpson referred again to the error in the email address, explaining that all parties had to agree any changes and it had therefore been brought to her attention at the time. This was a genuine error by the Respondent and there were mitigating circumstances. There was no malice intended and the Respondent had rectified the error once he was made aware. The Applicants had the details of the tenancy deposit scheme in the tenancy agreement. Miss Simpson noted that the Respondent had offered a sum equivalent to one and a half times the deposit and this seemed a fair sanction. The Respondent had sent his deep apologies to the Applicants for any stress the situation may have caused them. It was a genuine error and oversight on his part.
- 13 The Case Management Discussion concluded and the Legal Member confirmed that the decision would be issued in writing.

### **Relevant Law**

- 14 The relevant law is contained within the Housing (Scotland) Act 2006 and the Tenancy Deposit Scheme (Scotland) Regulations 2011. Section 120 of the 2006 Act provides as follows:-
- “120 Tenancy deposits: preliminary*
- (1) A tenancy deposit is a sum of money held as security for—*
- (a) the performance of any of the occupant's obligations arising under or in connection with a tenancy or an occupancy arrangement, or*
- (b) the discharge of any of the occupant's liabilities which so arise.*
- (2) A tenancy deposit scheme is a scheme for safeguarding tenancy deposits paid in connection with the occupation of any living accommodation.*
- 15 The 2011 Regulations provide 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.”*

*“9.—(1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal 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 by summary application and must be made 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 sheriff—*

*(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 sheriff 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.”*

## **Findings in Fact**

- 16 The Applicants entered into a tenancy agreement with the Respondent dated 15 February 2020. The tenancy commenced on that same date.
- 17 In terms of Clause 12 of the said tenancy agreement the Applicants agreed to make payment of a tenancy deposit in the sum of £595.
- 18 The Applicants paid the tenancy deposit in two instalments. £200 was paid on the 21 December 2019 and £395 was paid on the 17 January 2020.
- 19 The Respondent failed to pay the deposit into an approved deposit scheme within the statutory timescale.

- 20 The Respondent discovered the error when noticing an anomaly in his accounts.
- 21 The failure to lodge the deposit was an error on the Respondent's part.
- 22 The Respondent paid the tenancy deposit into an approved deposit scheme on 15 September 2021.
- 23 The Respondent provided incorrect contact details for the Applicants to the tenancy deposit scheme.
- 24 The Respondent did not provide the prescribed information to the Applicants regarding the tenancy deposit scheme.
- 25 The Respondent lets out a number of properties. The Respondent is aware of his statutory obligations under the 2011 Regulations.
- 26 The tenancy between the parties terminated on 18<sup>th</sup> June 2022.

### **Reasons for Decision**

- 27 The Tribunal determined the application having regard to the application paperwork, the written representations from the parties and the verbal submissions at the Case Management Discussion. The Tribunal was satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. It was noted that the substantive facts of the matter were agreed.
- 28 The 2011 Regulations specify clear duties which are incumbent on landlords in relation to tenancy deposits. Regulation 3 requires a landlord to pay any deposit received in relation to a relevant tenancy to an approved tenancy deposit scheme within thirty working days of the beginning of the tenancy. The deposit must then be held by the scheme until it can be repaid in accordance with the requirements of the Regulations following the end of the tenancy.
- 29 It was a matter of agreement between the parties that the tenancy had commenced on 15 February 2020, that the Applicants had paid a deposit of £595 in two instalments, with the latter payment received on 17 January 2020, and that the Respondent had not paid the deposit into an approved tenancy deposit scheme until 15 September 2021 which was out with the statutory timescales. The Respondent had also failed to provide the prescribed information to the Applicants regarding the scheme in which their deposit had been placed. The Respondent was therefore in breach of Regulation 3, which

was accepted in the verbal submissions by Miss Simpson at the Case Management Discussion.

- 30 Regulation 9 provides that any tenant may apply to the Tribunal for an order where the landlord has not complied with the duty under regulation 3. Further, under Regulation 10 in the event of a failure to comply, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. Accordingly having been satisfied that the Respondent had failed to comply, the Tribunal then had to consider what sanction to impose having regard to the particular facts and circumstances of the case. Whilst parties had given a view on an appropriate level of sanction ultimately this was at the discretion of the Tribunal.
- 31 The Tribunal considered the requirement to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach. Ultimately this was not a situation where the Tribunal considered an award at the higher end of the scale was merited. The Tribunal accepted the Respondent's explanation for not lodging the deposit, and not providing the relevant information, timeously. It was unfortunate that an error had been made in not lodging the deposit on time but the Tribunal did not consider there to be any deliberate attempt on the Respondent's part to evade the duties imposed by the Regulations. Upon discovering the error he had sought to address the matter without any prompting from the Applicants. It was regrettable however that he had not advised the Applicants of this at the time nor provided them with the prescribed information regarding the scheme.
- 32 The Tribunal further noted that the deposit had been paid over to the scheme albeit at a late stage in the tenancy. The Applicants had therefore benefited from the security of the deposit scheme when the tenancy ended. The Tribunal did accept that they would have suffered a level of stress at that time as a result of the uncertainty regarding their deposit, as well as other issues they had experienced with the tenancy. However this would have been allayed fairly quickly through receiving confirmation from the scheme that the deposit was secure and they had subsequently been repaid the sum in full. The Respondent had also sought to make amends by offering an apology and a sum in settlement of the matter which again suggested he was genuinely remorseful for the error.
- 33 The Tribunal did however note the purpose of Regulation 10, namely to penalise landlords to ensure they comply with the duty to protect and safeguard tenancy deposits. The provisions of Regulation 10 leave no discretion where a landlord is found to have failed to comply and permit an award of up to three times the deposit where a finding of breach is made. The Respondent is clearly an experienced landlord and should be well aware of the importance of ensuring compliance with his statutory obligations. The

mitigating circumstances outlined by Miss Simpson were not an excuse, albeit they did give some indication as to why the deposit had not been lodged.

- 34 Accordingly balancing the competing factors in the particular facts and circumstances of this case, the Tribunal considered that a sanction in the sum of £595 would be appropriate, being a sum equivalent to the deposit.

### **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.**

# Ruth O'Hare

**20/10/2022**

**Legal Member/Chair**

**Date**