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/20/2178

Re: Property at 16 Precinct Street, Coupar Angus, Blairgowrie, Perth and Kinross, PH13 9DG ("the Property")

Parties:

Mr William Martin, Mrs Annie Martin, 4 Vinney Place, Letham, Forfar, DD8 2QA ("the Applicants")

Jo Rattray, Mr Gordon Duncan, Ballachraggan Cottage, Kirkmichael, Blairgowrie, Perth and Kinross, PH10 7LT ("the Respondents")

Tribunal Members:

Steven Quither (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondents failed to comply with their duty under Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and makes an order for payment to the Applicants in the sum of FIVE HUNDRED POUNDS (£500) ONLY.

1. BACKGROUND

The Applicants were the tenants and the Respondents the landlords under a Private Residential Tenancy of the Property commencing 24 January 2019 and which came to an end on 26 July 2020. The Applicants paid a deposit of £500 in cash at the start of the tenancy and it is conceded by the Respondents that they failed to place their deposit in an approved scheme in accordance with their obligation under Regulation 3 of the 2011 Regulations until 3 July 2020, just over 3 weeks before the tenancy came to an end.

2. THE CASE MANAGEMENT DISCUSSION

A Case Management Discussion ("CMD") took place by telephone conference on 3 December 2020. Although in attendance, the Applicants were represented in the main by a "supporter", Robert Durnan. Both Respondents were in attendance but in the main their case was presented by Jo Rattray.

Prior to dealing with the subject matter, a preliminary issue arose, namely what use was to be made of a large bundle of documentation lodged by the Respondents and which contained information I was concerned to be sure they were content to be sent to the Respondents, since some of it contained details of private medical matters and information about the Respondents' position in some matters which I wished to be clear they were content to be made known to the Applicants.

After some discussion, the Respondents were content for this documentation to be sent in its entirety to the Applicants, which Ms Rattray did herself, for which I am grateful.

After a short adjournment to let the Applicants receive the documentation and consider it briefly, I indicated to the Applicants that there seemed to be 3 possible ways to proceed, namely:--

a) Proceed as best as possible this afternoon;
b) Have a further adjournment for a longer period to let them consider the documentation at greater length; or
c) Fix a further CMD to allow them time to consider the documentation at length and lodge a written response, if they so wished.

After further discussion the Applicants confirmed they were content to proceed today, due to a wish to make progress towards a conclusion if at all possible.

At times the CMD was somewhat spirited but since the Respondents had made a clear admission as to their failure to appropriately lodge the deposit, the only matter in question was the level of the award.

I tried to find the truth of the assertion by the Applicants that the Respondents knew of the failure within 3 months of commencement of the tenancy, but failed to draw this to their attention. Mrs Martin stated she had told Mr Duncan about this during a visit by him to the Property, but he was adamant she had not, so I was left simply with these 2 conflicting accounts to reconcile. On balance, I preferred the Respondents' recollection that this was not brought to their attention. It is, of course, the landlord's obligation to lodge the deposit without needing to be reminded of it by the tenant.

The parties were in agreement that the deposit lodged was ultimately divided between them to settle rent due up till the end of the tenancy, the figures having been discussed and agreed between them.

So far as the Applicants were concerned, Mr Durnan very fairly stated that they were not seeking to capitalise on the Respondents' failure, but were simply seeking an appropriate sanction for breach of their obligation. He did not take issue with any of the information provided by the Respondents so far as relating to the deposit and queried the relevancy of the information provided about other peripheral matters stated by the Respondents as arising from the tenancy.

The Respondents' position was made clear by the documentation lodged ie that some extremely serious and worrying medical issues had caused them to overlook their obligation and the cash deposit had, literally, sat in a drawer for well over a year. Reference was made to previous deposits having been lodged appropriately, which worked for and against the Respondents, in that it showed a

responsible approach having been taken previously but also highlighted the failure to do so this time despite obvious knowledge of the obligation.

3. FINDINGS IN FACT

The Applicants were the tenant and the Respondents the landlord under a Private Residential Tenancy which commenced on 24 January 2019 and in respect of which the Applicants paid a deposit of £500 at or about the date of commencement of the tenancy ie the end of January 2019. Thereafter the deposit was placed in an approved scheme on 3 July 2020, just over 3 weeks before the tenancy came to an end on 26 July 2020. It should have been so placed within 30 working days of the beginning of the tenancy on 24 January 2019. The Respondents were in breach of their obligation to do so, a fact which they candidly accepted with remorse and for which they provided an explanation, with some medical vouching

4. REASONS FOR DECISION

By e-mails produced from SafeDeposits Scotland it is clear that the deposit was lodged with them on 3 July 2020 and then used to settle rent due to the end of the tenancy, as agreed by the parties. The Respondents accepted and conceded their failure to lodge the deposit in an approved scheme within 30 working days of commencement of the tenancy on 24 January 2019. Having established this, the Tribunal requires to make an order requiring the Respondents to make a payment to the Applicants.

It is in the Respondents' favour that the reasons for the failure were occasioned by very serious medical matters, for which some vouching was produced, there was previous compliance with the obligation, no actual loss appears to have been caused to the Applicants, as evidenced by the deposit being used to settle up rent outstanding at the end of the tenancy and they very clearly admitted their omission and expressed remorse, as contained in the documentation lodged by them.

None of the factors stated by Sheriff Ross in the Upper Tribunal case of Rollet v Mackie 2019 UT 45 ie repeated breaches against a number of tenants, fraudulent intention, deliberate or reckless failure to observe responsibilities, denial of fault; very high financial sums involved or, as I have stated, actual loss appeared to be present here. They were nonetheless careless, albeit with some explanation as to why they were concerned with other matters.

It is well settled that the deposit obligation applies just as equally to the "amateur landlord" as it does to large, professional, commercial, letting organisations and also that the Tribunal has complete discretion as to the level of order to make and requires to do so in a fair, proportionate and just manner.

In addition, any wider, financial dispute between parties, of which there was some suggestion here, however actual it might be now, has no relevance to the level of order, due to other remedies being available for resolution of such matters.

In all of these circumstances and taking all of these factors into account, as well as the parties stated positions and information provided to me, I considered this case to be towards the less serious end of the scale and accordingly consider an order of £500 to be appropriate.

5. DECISION

For the Respondents to pay the Applicants the sum of £500.

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.

Steven Quither

3 DECEMBER 2020

Legal Member/Chair **Date**