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 (Regulations)

Chamber Ref: FTS/HPC/PR/20/1779

Re: Property at 6/1 2 Gourock Ropeworks, Bay Street, Port Glasgow, PA14 5EN ("the Property")

Parties:

Dr Diane Pennington, 7/5, 240 Wallace Street, Glasgow, G5 8AU ("the Applicant")

Mr Leslie Donohue-Bromley, 18 Rue de la Chagnaie, 86260 La Puye, France ("the Respondent")

Tribunal Member:

Alan Strain (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent pay the sum of £1000 to the Applicant

Background

This is an application under Regulation 9 of the Regulations and Rule 103 of ***The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017*** **(Rules)** in respect of (1) an alleged failure to protect a tenancy deposit; and (2) to provide information to the Applicant as required under Regulation 42 of the Regulations.

The Tribunal had regard to the following documents:

1. Application received 21 August 2020;
2. Short Assured Tenancy Agreement (**SAT**) commencing 1 January 2017;
3. Receipt for deposit dated 25 October 2016;
4. Outline Submissions for the Applicant dated 9 October 2020;
5. My Deposit Scotland (**MDS**) correspondence confirming no deposit protected;
6. Written Representations from Respondent's Solicitors dated 3 December 2020.

Case Management Discussion (CMD)

The CMD proceeded by conference call in light of the current situation.

The Parties did not participate but were represented by their respective solicitors.

The Tribunal then heard from the Parties' solicitors.

The Respondent's position was that the deposit was not protected and the information not provided due to oversight on his part. The breach of his obligations was not deliberate or wilful. He misunderstood the nature of his obligations. Respondent is not a professional landlord. This was his only rental property and the Applicant was his first tenant. The Respondent will repay the deposit and any sanction imposed by the Tribunal It was submitted that the award should be at the level of the deposit.

It was a matter of agreement that the tenancy had ended in September 2020. The deposit had not since been protected or returned.

The Applicant sought the maximum sanction of 3 times the deposit. It was a wilful and deliberate disregard of the Regulations by the Respondent. The Applicant had been put to the time and expense of raising proceedings and, in the 4 months since the tenancy ended, had still not repaid the deposit.

The facts were not in dispute between the Parties and this was confirmed by their solicitors. The only contentious issue was whether or not the breach had been wilful and/or deliberate. The Applicant invited the Tribunal to draw the conclusion that it was wilful and deliberate from the undisputed facts – in particular, it was argued that the passage of time from the end of the tenancy to date without repayment of the deposit was significant. It was also significant that the deposit was unprotected for the entire duration of the tenancy. The sanction should be at the upper end of the scale under reference to ***Jenson v Fappiano 2015 SC Edin 6***.

The Respondent maintained that these facts did not indicate wilful or deliberate conduct.

Decision and Reasons

The Tribunal considered that it had sufficient information to determine the matter at this stage and that the procedure was fair.

The Tribunal considered the evidence before it and made the following findings in fact:

1. The Parties entered into the SAT commencing 1 January 2017;
2. The Applicant paid a deposit of £700 on 25 October 2016 which was not protected during or after termination of the SAT;
3. No information was ever provided to the Applicant as required by Regulation 42;
4. The SAT ended in September 2020;
5. The deposit was unprotected for a period of nearly 4 years;

6. The Respondent is an inexperienced landlord who only lets this Property and the Applicant was his first tenant. He was unaware of the requirement to protect the deposit and to provide the information;
7. The Respondent's failure to protect the deposit and provide the information was due to oversight and was not wilful or deliberate;
8. The Applicant has not received repayment of the deposit to date.

It was not in dispute that the tenancy deposit had not been protected and the information not provided in breach of the regulations. Having made that finding it then fell to the Tribunal to determine what sanction should be made in respect of the breach. In so doing the Tribunal considered the case of ***Jenson*** referred to by the Applicant's solicitor and referred to and adopted the approach of the court in ***Russell-Smith and others v Uchegbu [2016] SC EDIN 64***. The Tribunal considered what 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 upon its own facts and in the end of the day the exercise by the Tribunal of its discretion is a balancing exercise.

The Tribunal weighed all the factors and found it be of significance that the deposit was unprotected for nearly 4 years; the Respondent was an inexperienced landlord with no knowledge of the requirement to protect the deposit and provide the information; the failure to protect the deposit and provide the information was due to oversight and was not wilful or deliberate; the Respondent had still not received repayment of the deposit to date - although it was now conceded that this would be done.

In the circumstances the Tribunal considered the breach not to be insignificant particularly in circumstances where the deposit had not been repaid despite the tenancy having ended and proceedings having been raised before the Tribunal. The Tribunal considered the sum of £1000 to be a fair, proportionate and just sanction in the circumstances of the 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.

A Strain

17 December 2020

Legal Member/Chair **Date**