Housing and Property Chamber
First-tier Tribunal for Scotland

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules")

Chamber Ref: FTS/HPC/PR/20/0688

Re: Property at Flat 1/1, 112 Mavisbank Gardens, Glasgow, G51 1HR ("the Property")

Parties:

Mr. Gabriele Biscontin, Piazzetta A. Toffoli, 9, 33080, Porcia (PN), Italy ("the Applicant")

Ms. Maria de Martin, Via Europa 109, 31020 San Fior (TV), Italy ("the Applicant's Representative")

Mr John Archer, 6 Lawn Park, Milngavie, Glasgow, G62 6HG ("the Respondent")

Tribunal Member:

Ms. Susanne L. M. Tanner Q.C., Legal Member and Chair

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") determined that an order must be made in terms of Regulation 10 of the 2011 Regulations requiring the Respondent to pay to the Applicants the sum of ONE THOUSAND POUNDS (£1000.00) Sterling

1. Procedural background

1.1. On 26 February 2020, the Applicant made an application ("the Application") to the tribunal.

1.2. The Application is made in terms of Rule 103 of the 2017 Rules, namely an application for an order for payment where the landlord (Respondent) has failed to carry out duties in relation to tenancy deposits.

1.3. The Applicant attached to the Application:

1.3.1. An image of a lease agreement stated to be a Short Assured Tenancy agreement between the Applicant and another and the Respondent dated 1 July 2019;

1.3.2. A bank printout showing payments made by the Ms Maria De-Martin flatmate to "John Archer"; and

1.3.3. Copy text messages from 8 January 2020 to 22 February 2020.

1.4. On 11 March 2020, the Application was accepted for determination by the tribunal.

1.5. On 11 March 2020, the tribunal issued Directions requiring the Applicant to provide email confirmation from the three tenancy deposit protection schemes in Scotland that the tenancy deposit is not protected by them.

1.6. On 18 March 2020, the Applicant provided copy emails from all three schemes showing that the tenancy deposit for the Applicant and the Property had not been registered with them.

1.7. On 20 March 2020, the tribunal informed the Applicant that due to the Covid-19 pandemic the tribunal was not in a position to fix a Case Management Discussion at that time.

1.8. On 24 June 2020, the tribunal notified the parties that the Application had been referred to the tribunal and that a Hearing had been fixed for 4 August 2020 at 1400h. Parties were advised that the tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision on the application. Parties were advised that if they did not attend the Hearing, this would not stop a decision or order from being made by the tribunal if the tribunal considered that it has sufficient information before it to do so and the procedure has been fair. The Respondent was invited to submit any written representations he wished by 15 July 2020. The Application paperwork and notification of the hearing was served on the Respondent by Sheriff Officers.

1.9. The Respondent requested additional time to submit written representations.

1.10. On 21 July 2020, the tribunal issued Directions to the parties, which included additional time for the Respondent to submit written representations. The Respondent was also directed to produce any documentary evidence to show that he placed the Applicant's deposit in a statutory deposit protection scheme or if no such evidence was available, any submissions he wishes to make having regard to the duties on landlords specified in the Tenancy Dpeosit Scheme (Scotland) Regulations 2011.

1.11. On 26 July 2020, the Respondent submitted written submissions, in which he confirmed that he had taken a deposit of £800.00 from the Applicant for a tenancy which commenced on 1 October 2017. He indicated that half of the deposit had been returned to the Applicant's flatmate at the end of the tenancy and explained that the remainder had been retained by him for cleaning and removal of furniture. A cleaning receipt and three photographs were attached. No evidence or submissions were provided, as directed, in relation to the Respondent's duty to lodge the deposit in a tenancy deposit protection scheme.

2. Case Management Discussion ("CMD") – 4 August 2020 at 1400h – by teleconference

2.1. The Applicant's Representative, Ms. Maria de Martin, attended the teleconference.

2.2. The Respondent attended the teleconference.

2.3. The tribunal chair explained the nature and purpose of the CMD and made reference to the Directions previously issued by the tribunal.

2.4. Applicant's Representative's submissions

2.5. Ms de Martin stated that the deposit was £800. It was paid on 11 September 2017 (£100 to secure the flat) and 2 October 2017 (£700). She referred to the bank statement which had been lodged with the Application. The tenancy commenced on 1st October 2017 and she moved in with the Applicant. She moved out at the end of June 2019 and Ms Christina Mari moved in at the beginning of July 2019. The lease that was lodged by the Applicant with the Application was for a period after Ms de Martin left the property. The lease with the Applicant and Ms Mari ended completely on 31 January 2020. The Application to the tribunal was made on 26 February 2020 after the Applicant had been in text correspondence with the Respondent about return of the

deposit. Ms de Martin stated that while she was in the Property she and the Applicant were not provided with any information by the Respondent relating to tenancy deposit protection. She did not know that it was mandatory at the time. She paid the Respondent directly and the Applicant gave her half of the deposit and half of the rent. When Cristina Mari moved into the Property, she gave £400 to Ms de Martin directly instead of to the Respondent, so the Respondent kept the original £800 deposit throughout the second tenancy.

2.6. The Respondent's submissions

2.7. The Respondent agreed that the original tenancy started on 1 October 2017, that Ms de Martin left in June 2019, that Ms Mari moved in with the Applicant in July 2019 and that the Applicant's final let ended on 31 January 2020.

2.8. The Respondent accepted that a deposit of £800.00 was paid in two instalments on 11 September 2017 and 2 October 2017.

2.9. The Respondent accepted that the deposit was not lodged in a deposit protection scheme at any time. He stated that he was aware that there was a statutory duty and stated that it had slipped his mind to do it. He stated that it was his fault and that he should have done it. He stated that the money was being held in his bank account. He stated that he did not think about the deposit at the time of the change of tenancy as he considered that there was a continuity of tenancy. He stated that it did not occur to him to lodge it. He stated that after the end of the tenancy, half of the deposit was returned. He stated that there was a handover for the lease on 31 January 2020. Ms Cristina Mari was present and he agreed to hand over half the deposit at that stage. He put the money into her account that day or the following day. He said to her that he would be using the remainder of the deposit for cleaning. At that time he did not know what the cleaning was going to cost or the cost for the removal of furniture. He stated that the cleaning cost was £320.00 and referred to a receipt which he had lodged with his submissions. He stated that the removal of the furniture was the cost of his time and the use of a van which was borrowed from a family member.

2.10. He stated that this is his only rental property. He bought this property in 2008. He has been renting it out ever since. It is not currently tenanted. There has not been in anyone in the property since the Applicant and his flatmate moved out in January. He stated that he is registered as a landlord and he is registered with SafeDepositsScotland. However, he stated that he has never used SafeDepositsScotland to lodge this or any other tenancy deposits and does not know how the scheme operates to protect tenants' deposits or to deal with disputes. He stated that he thought that deposit lodging was "a voluntary

thing". He stated that he has never come across this situation before and that he has always returned deposits to tenant. He stated that the Applicant and his flatmates were reasonable tenants and that he had no disputes with them but that he felt justified in keeping half of their deposit because of the state of the flat. He acknowledged that in failing to lodge the deposit he had deprived the Applicant of the opportunity to challenge the proposed deduction of £400 for cleaning. He stated that at the time of the handover at the end of the lease, the Applicant was questioning whether it had been lodged and that if he had known he would have done it then.

2.11. The Respondent stated that he intended to contact SafeDepositsScotland to see if he could lodge the part deposit he still holds in order that the dispute over the £400 could be dealt with through the scheme.

2.12. He invited the tribunal to take into account his written and oral submissions in considering the appropriate level of the payment order for his admitted failure to lodge the deposit in the scheme at any time or to provide the prescribed information to the Applicant and his flatmate.

2.13. The Applicant's Representative's response

2.14. Ms de Martin stated that she thought that it was too late to secure the deposit now and go through the scheme for a resolution. She referred to the text messages which had been lodged, in particular a message from the Applicant to the Respondent on 14 February 2020, in which the Applicant told the Respondent that he would take a legal action about the failure to lodge the deposit and he said that the tribunal could order a refund of up to three times the deposit.

2.15. She also questioned the cleaning bill lodged by the Respondent and whether it was genuine and raised other matters about mould and the furniture which had been left in the flat, but accepted that these issues were not relevant to the current dispute and might be relevant to a claim for refund of the remainder of the deposit, either through the scheme or via another claim for civil proceedings to the tribunal.

3. Findings in Fact

3.1. The Applicant and another tenant, Ms de Martin, and the Respondent entered into a tenancy for the Property on which started on 1 October 2017.

3.2. The Applicant and Ms de Martin paid a £800.00 deposit to the Respondent in two instalments by 1 October 2017.

3.3. Ms de Martin moved out in or about June 2019.

3.4. Ms Cristina Mari moved in in or about July 2019.

3.5. A new tenancy agreement was entered into between the Applicant and Ms Mari and the Respondent dated 1 July 2019, which was stated to be a short assured tenancy agreement.

3.6. The Respondent retained the £800.00 deposit which had been paid to him previously in respect of the new tenancy agreement.

3.7. The Applicant's tenancy ended on 31 January 2020.

3.8. The Application to the tribunal was made on 26 February 2020, within three months of the end of the tenancy.

3.9. The deposit should have been lodged with a deposit protection company within 30 working days of the start of the tenancy on 1 October 2017.

3.10. The deposit should have transferred into the names of the new tenants within 30 working days of the start of the new tenancy on 1 July 2019.

3.11. The Respondent has not lodged the Applicant's deposit with a tenancy deposit protection scheme at any time, in respect of either tenancy.

3.12. Following the end of the tenancy on 31 January 2020, the Respondent returned £400.00 to the Applicant's flatmate and retained the balance of £400.00 for cleaning and removal of furniture.

3.13. There is a dispute between the parties about the Respondent's retention of £400.00.

3.14. The Applicant has been unable to dispute the retention of half of the deposit through a scheme as the deposit has not been lodged.

3.15. The Respondent was first notified that the Applicant was complaining about the non-lodging of the deposit in February 2020 in text messages from the Applicant.

4. **Discussion**

4.1. The tribunal took account of the Applicants' written and oral submissions; and the Respondents' written and oral submissions.

4.2. In particular the tribunal had regard to the fact that the Applicant's deposit was unprotected throughout the two tenancies when it should have been lodged within 30 working days of the start of the tenancy; and should have been transferred when the second tenancy started. The Respondent remains apparently unaware of his obligations in respect of tenancy deposits despite having an account with SafeDeposits Scotland. This is his only rental property but it has been let throughout the period since the 2011 Regulations came into force and he has not lodged any tenancy deposits. The tribunal observed that the tenancy agreement which had been produced was a short assured tenancy agreement which tends to suggest that the Respondent is also unaware of the 2016 Act, private residential tenancies and that short assured tenancies can no longer be created. The deposit was unprotected for a period of two years and 3 months from the start of the first tenancy. The Applicant was deprived of his right to deal with the dispute over the proposed deduction of £400 for cleaning and furniture removal via the tenancy deposit protection scheme. The tribunal took account of the Respondent's submissions in mitigation. He has stated that he will now seek to lodge the deposit in order that the dispute over the £400.00 can be dealt with through the scheme, if possible. The tribunal also took account of the fact that the full deposit was £800.00 and that the tenant has received £400.00 back.

4.3. For the reasons outlined, the tribunal decided to make an order for payment by the Respondent to the Applicant of the sum of £1000.00 which is more than one times the amount of the deposit. That sum was considered to be reasonable in all of the circumstances.

4.4. The tribunal chair informed the Applicant that the Payment Order could be enforced by the Applicant against the Respondent after the expiry of the permission to appeal period.

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.

______________________________ **4 August 2020**

Susanne L M Tanner Q.C.
Legal Member/Chair