Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/23/3319

Re: Property at 31/1 Mayfield Gardens, Edinburgh, EH9 2BX ("the Property")

Parties:

Dr Nouf Alzahrani, 17 Leopold Place, Edinburgh, EH7 5LB ("the Applicant")

Mrs Kefah Khader, 27A Mayfield Gardens, Edinburgh, EH9 2BX ("the Respondent")

Tribunal Members:

Anne Mathie (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment in the sum of £1980 be made against the Respondent in favour of the Applicant in respect of the Respondent's failure to lodge the tenancy deposit in a recognised Tenancy Deposit Scheme.

Background

1. An application was lodged dated 15 September 2023 in terms of Rule 103 of the Chamber Rules being an application for an order for payment where landlord has failed to carry out duties in relation to tenancy deposits.

2. Along with the application form, the Applicant submitted the following documents:
   - Copy of the tenancy agreement
   - Evidence from all three recognised schemes of the deposit not being held by them
   - Correspondence regarding moving out of the Property
   - Bank statement showing the deposit being paid.

3. The application was accepted and assigned to a case management discussion today.

4. Notice of the application and details of the case management discussion was served on the Respondent by Sheriff Officers on 7 November 2023.

5. The correspondence served on the Respondent advised:
"*The tribunal may do anything at a case management discussion which it may do at a hearing , including making a decision on the application which may involve making or refusing a payment order. If you do not take part in the case management discussion, this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.*"

6. The correspondence also advised that any written representations should be lodged by 27 November 2023. No written representations have been lodged.

The Case Management Discussion

7. The case management discussion took place today by teleconference. The Applicant attended along with an interpreter, Mr Tarek Alsharati. There was no appearance by or on behalf of the Respondent. On questioning the Applicant, via the interpreter, the Tribunal was able to establish that she became aware of the potential breach of the Tenancy Deposit Regulations when she moved into her new Property and received notification from the Tenancy Deposit Scheme about the deposit being lodged. She had asked the Respondent about this but had not received a response. In relation to the Respondent's position, the Applicant believed that she only rented out one Property but lived in her own Property in the same street. The Applicant had not received a response when she had questioned the Respondent about the lodging of the deposit and was unable to say whether the Respondent was aware of her obligations in terms of the Regulations or not. She did, however, believe that the Property had been previously rented out and that the Respondent should be aware of her tenancy deposit obligations. She was unaware of the length of time of the Respondent having been a Landlord.

8. There was nothing further before the Tribunal that contradicted the written evidence and submissions and oral evidence of the Applicant.

Findings in Fact

9. The Tribunal made the following findings in fact:

- Parties entered into a private residential tenancy agreement in respect of the Property from 10 April 2021 to 8 September 2023
- Prior to commencement of the tenancy, on 31 March 2021, the Applicant paid to the Respondent the sum of £990 by way of tenancy deposit
- The deposit had not been repaid to the Applicant despite requests for this to be done.

- The deposit had not been lodged in a recognised Tenancy Deposit Scheme as required by the Tenancy Deposit Schemes (Scotland) Regulations 2011.
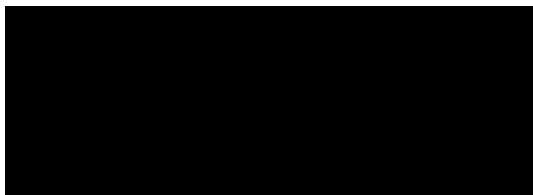
Reasons for Decision

10. The Tribunal took into account all the written submissions and evidence before it along with the oral submissions of the Applicant at the case management discussion. The Tribunal considered that the procedure had been fair. The evidence showed that a deposit of £990 had been paid by the Applicant to the Respondent and that this had not been repaid, despite requests to do so. The Tribunal required to weigh up the fact that the deposit had been unprotected since March 2021. There was now a dispute over the return of the deposit and the Applicant had been denied the opportunity to avail herself of the dispute resolution mechanism built into the Tenancy Deposit Schemes. Against this, the Tribunal took into account the evidence that it appeared that the Respondent did not let a number of Properties. While ignorance of the legislation was not an excuse, there was no evidence to suggest that the Respondent had knowingly withheld the deposit from being lodged in a recognised scheme. In all the circumstances, the sum of £1980, which was equal to two times the tenancy deposit of £990, was an appropriate figure.

Decision

11. The Tribunal determined that an order for payment in the sum of £1980 be made against the Respondent in favour of the Applicant in respect of the Respondent's failure to lodge the tenancy deposit in a recognised Tenancy Deposit Scheme. This figure representing two times the original deposit sum of £990.

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.

15 December 2023

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Legal Member/Chair   **Date**