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

Chamber Ref: FTS/HPC/PR/24/0363

Re: Property at Flat 3/1, 16 Lochburn Gate, Glasgow, G20 0SN ("the Property")

Parties:

Mr Jake Kalender, Flat 3/1, 15 Kelvindale Gardens, Glasgow, G20 8DW ("the Applicant")

Mr Anene Emeka Uzoewulu, 33 Bargeddie Street, Glasgow, G33 1PA ("the Respondent")

Tribunal Members:

Rory Cowan (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that (i) the Respondent failed to comply with Regulations 3(1)(a) and (b) of the Tenancy Deposit Schemes (Scotland) Regulations 2011; and (ii) that the sum of £1,000, was an appropriate sanction.

- Background

By Application under Rule 103 dated 19 January 2024 (the Application) the Applicant sought an order for payment against the Respondent for an alleged failure to pay a tenancy deposit into an approved scheme as well as a failure to issue prescribed information to him. In support of the Application, the Applicant produced various documents including a copy correspondence with the 3 approved tenancy deposit schemes confirming that the deposit was not lodged with any of the approved tenancy deposit schemes, copy bank information to confirm payment of the deposit and a copy of his Notice to Leave the Property that dealt with the issue of the termination of the underlying lease. A Case Management Discussion (CMD) was assigned to take place on 7 May 2024 to be conducted by way of conference call. Service of the Application was by sheriff officers on 11 April 2024 and on the same day and prior to the CMD, the Respondent sent an email to the Tribunal purporting to show that the deposit had been repaid to the Applicant on or around 25 January 2024.

- The Case Management Discussion

A Case Management Discussion (CMD) was assigned to take place on 7 May 2024 to be conducted by way of conference call. The Applicant appeared and represented himself. The Respondent did not appear, nor was he represented. Notwithstanding, the Tribunal was of the view that he was aware of the Application, the date of the CMD and his requirement to attend and therefore the Application could be dealt with in his absence.

In the first instance, the Applicant confirmed that the Application was against the Respondent solely and any reference to Lupeng Consulting Limited could be removed. The Tribunal noted that and removed any reference to Lupeng Consulting Limited. The Applicant also confirmed that the deposit had been repaid to him on or around 25 January 2024. The Applicant confirmed that he had paid to the Respondent a security deposit on or around 5 September 2023 for the tenancy of the Property that started on 6 September 2023. He also stated that it had not been paid into an approved tenancy deposit scheme and that he had not received any "prescribed information" about the deposit. Emails from all 3 approved schemes were lodged with the Application to confirm that the deposit had not been lodged with them. The Applicant described the initial contact with the Respondent when the Applicant replied to an advert on "Spare Room". He attended the Property with the Respondent and rented a room under a Private Residential Tenancy Agreement that was signed 5 September 2023. Although there were "2 or 3" others renting rooms in the Property, the Applicant confirmed the Respondent did not live at the Property. He also mentioned that, whilst he had not noted it at the time, the "Landlord" per the tenancy agreement had been described as Lupeng Consulting Limited albeit he had always dealt with the Respondent.

The Applicant also stated that he gave notice to leave on 2 October 2023 with an end date of 31 October 2023 and that he had been in dispute with the Respondent about whether he could leave on that date, the Respondent claiming he could not despite the tenancy being a Private Residential Tenancy where the Applicant was only required to give 28 days' notice and could do so at any point. He vacated the Property on 31 October 2023, but it was only after raising the Application that the Respondent repaid the deposit to him. The Applicant did indicate that he had sought to "remind" the Respondent of the requirement to lodge his deposit and issue prescribed information and that he did so by text on 7 October 2023 (after notice had been given). He also claimed that he was contacted by the Respondent's brother between lodging the Application and return of the deposit who claimed that the deposit had been protected with reference to a screenshot, which the Applicant claimed did not show any of his personal details. Copies of the text and other message were not lodged with the Application. The Applicant also indicated that, when he was in dispute with the Respondent about ending his tenancy, he was told by the Respondent that he [the Respondent] "knew the law" and that he "had been doing this for years". He also made the point that the Respondent did not appear to be registered as a landlord.

The applicant explained that he had found the whole issue of his deposit not being protected "stressful". He was not sure he would ever get his deposit back and spent some time contacting Shelter and various solicitors to get advice. He spent

considerable time corresponding with the Respondent on the question of his entitlement to end the tenancy all at a time when he was trying to focus on his university work.

- Findings in Fact and Law

1) The Respondent is the heritable proprietor of Flat 3/1, 16 Lochburn Gate, Glasgow G20 0SN.
2) The Respondent was the Applicant's landlord for the purpose of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
3) The Applicant was a tenant of the Respondent in terms of a tenancy agreement for the property at Flat 3/1, 16 Lochburn Gate, Glasgow G20 0SN that commenced on 6 September 2023.
4) That, under the terms of the tenancy agreement, the Applicant paid to the Respondent the sum of £500 by way of security deposit.
5) That the security deposit of £500 was not paid into an approved tenancy deposit scheme.
6) That the Respondent therefore failed to comply with regulation 3(1)(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
7) That the Respondent did not issue the information to the Applicant as required by regulation 3(1)(b) and as prescribed by regulation 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
8) That the tenancy between the parties ended on 31 October 2023.
9) That the Respondent disputed that the Applicant could give notice to terminate his tenancy when he did.
10) That the Respondent has some experience as a landlord.
11) That on or around 7 October 2023 the Applicant sent a message by text reminding the Respondent of the requirement to lodge the deposit with an approved scheme.
12) That the security deposit in the sum of £500 was repaid by the Respondent to the Applicant on or around 25 January 2024.
13) That an appropriate penalty is a sum equivalent to £1,000.

- Reasons for Decision

The Respondent has not complied with his obligations under regulation 3(1)(a) and (b) of the 2011 Regulations. Whilst the tenancy agreement narrated Lupeng Consulting Limited as the "Landlord", based on the information before ethe Tribunal they were not. The Respondent was the Applicant's landlord. He is the heritable proprietor of the Property. That being the case he would have held the landlord's interest in the Applicant's tenancy and Lupeng Consulting Limited would have been his agent.The issue therefore for the Tribunal in the face of such a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 is to consider the level of the appropriate sanction. The level of such a penalty is a matter of discretion for the Tribunal taking into account the particular circumstances of the case when considering the approach to the level of the appropriate sanction (*Jensen v Fappiano [2015] 1WLUK 625*). It is a penalty for breach of the Regulations and not compensation for damage suffered (*Wood & Wood v Johnston UTS/AP/19/0023).* Whilst the Tribunal had no clear evidence on the full extent of the Respondent's experience as a landlord, there was evidence before it that suggested the

Respondent had some experience of being a landlord. It also appeared that, at very least by 7 October 2023, the Applicant had messaged the Respondent about the deposit and that it should be lodged with an approved scheme, but despite this, the deposit was not so lodged. Further, it was not until the Application was lodged that the deposit was repaid, nearly 3 months after the tenancy ended. It also seems that the Respondent persisted with an unstateable argument that the Applicant was not entitled to end the tenancy when he did which could be viewed as an attempt to retain the deposit. The deposit has therefore remained unprotected for the whole term of the tenancy although it was eventually repaid to the Applicant. Whilst these factors point to a deliberate rather than an accidental failure to pay the deposit into an approved scheme, the view of the Tribunal was that repayment reduced the level of the Respondent's culpability for his breach of the Regulations.

For all these reasons the Tribunal reached the conclusion that whilst the non-compliance in this case was not inadvertent it was at neither extreme of the spectrum of triviality. Taking this into account and all the circumstances of the Application and the Applicant's oral submissions, the Tribunal was of the view that this was an example of a case where the Respondent's culpability was in the middle of the scale. The appropriate sanction therefore would be to make an award at the level of £1,000.

- Decision

The Tribunal orders that the Respondent pay to the Applicant the sum of £1,000.

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.

Rory Cowan

Legal Member/Chair **7 May 2024 Date**