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 Section 16 of the Housing (Scotland) Act 2014.

Chamber Ref: FTS/HPC/PR/24/4446

Re: Property at 12a Cromar Drive, Dunfermline, KY11 8GE ("the Property")

Parties:

Miss Donna Davidson, 12a Cromar Drive, Dunfermline, KY11 8GE ("the Applicant")

Mr Robert Grassick, 12 Cromar Drive, Dunfermline, KY11 8GE ("the Respondent")

Tribunal Members:

Shirley Evans (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent failed to comply with his duty as a Landlord in terms of Regulations 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") as amended by The Housing (Scotland) Act 2014 (Consequential Provisions) Order 2017 by failing to pay the Applicant's Tenancy Deposit to the scheme administrator of an Approved Tenancy Deposit Scheme grants an Order against the Respondent for payment to the Applicant of the sum of FIVE HUNDRED POUNDS (£500) Sterling.

Background

1. This is an application for an order for payment for where it is alleged the Respondent has not paid a deposit into an approved scheme under the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"). The Application is made under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").

2. The Application was accompanied by a timeline, a rent receipt for £500 dated 24 October 2017 and signed by the Respondent, an email dated 4 July from the Respondent to the Applicant, an email dated 11 July 2024 from Safe Deposits Scotland, an undated screen shot from Letting Protection Scotland and an undated screen shot from My Deposits Scotland.

3. The Respondent lodged written submissions with photographs and text messages on 27 February 2025.

4. A Case Management Discussion ("CMD") proceeded by way of teleconference call on 30 April 2025. The Applicant appeared on her own behalf. The Respondent appeared on his own behalf.

5. There was very little disagreement between the parties on the relevant points. Mr Grassick agreed that he had advertised the Property for let on Gumtree on or about October 2017. He also agreed the tenancy commenced on 1 November 2017 although he had not retained a copy of the original tenancy agreement. Mr Grassick confirmed the Applicant had paid him £500 by way of a deposit.

6. The Respondent's position was that this failure was due to an oversight on his behalf. He accepted that he had failed in his duty to lodge the deposit with a scheme administrator. He did not know about the scheme and would have expected the Applicant to mention it to him as she was also a Landlord. He explained that he had asked the Applicant to leave, and that the Applicant had accused him of trying to evict her illegally and that she had sought assistance from Shelter. For his part Mr Grassick explained he took advice form his own solicitors who explained that without a copy of the tenancy agreement it would be problematic to evict the Applicant. His solicitors then entered into a dialogue with the Applicant. The Applicant left the Property on 31 October 2024. He explained that he had returned all of the deposit to the Applicant.

7. Ms Davidson confirmed the deposit had been returned to her on14 October 2024 and that she had left the Property on 31 October 2024. She moved back to a flat she had stayed in as a student which had been rented out for a number of years when she lived in Australia. She had had to give her tenant notice to leave so she herself could return there after her relationship with the Respondent broke down. When questioned by the Tribunal she advised she had incurred no losses. There was no mortgage on her property. She had not expected to get the full deposit back. She had felt traumatised by the Respondent's text messages and she did not want to engage with him. The Property had been her home for 7 years.

8. The Tribunal explained to Mr Grassick that as he had failed to place the deposit in an approved scheme an Order would be made against him, the maximum penalty being three times the tenancy deposit. Mr Grassick

submitted that he felt it would be fair if the Tribunal did not award anything to the Applicant as he had incurred £7000 of damages due to the state the Property had been left in by the Applicant.

Reasons for decision

9. The parties were in agreement that they entered into a tenancy commencing 1 November 2017 and that the Applicant had paid a deposit of £500. Further the Respondent accepted that he had not paid this into a scheme administrator. Parties were also in agreement that the deposit had been repaid in full on 14 October 2024.

10. For the purpose of Regulation 9(2) of the 2011 Regulations, an application where a landlord has not paid a deposit into a scheme administrator must be made within three months of the tenancy ending. The Tribunal found that the application was made in time, the tenancy still being in place between the parties.

11. Regulation 3 (1) and (2) of the 2011 Regulations provides –

"(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—

(a)pay the deposit to the scheme administrator of an approved scheme; and

(b)provide the tenant with the information required under regulation 42.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

The tenancy in this case was a "relevant tenancy" for the purposes of the Regulations. It appears to have been either an Assured or Short Assured Tenancy although a copy was never produced to the Tribunal. The Respondent accepts the deposit paid of £500 was not paid to a scheme administrator. This was due to his ignorance regarding the Regulations. It was not the duty of the Applicant who was also a Landlord to advise the Respondent of his duties. The deposit remained unprotected from 24 October 2017 until 14 October 2024 when the Respondent repaid it before inspection of the Property. The tenancy agreement terminated on 31 October 2024. The current application was made on 22 September 2024.

12. The 2011 Regulations were intended, amongst other things to put a landlord and a tenant on equal footing with regard to any tenancy deposit and to provide a mechanism for resolving any dispute between them with regard to the return of the deposit to the landlord or tenant or divided between both, at the termination of a tenancy. They were designed to prevent any perceived

"mischief" by giving a Landlord control over the return of the deposit at the termination of a tenancy.

13. The amount to be paid to the Applicant is not said to refer to any loss suffered by the Applicant. Accordingly, any amount awarded by the Tribunal in such an application cannot be said to be compensatory. The Tribunal in assessing the sanction level has to impose a fair, proportionate and just sanction in the circumstances, taking into account both aggravating and mitigating circumstances, having regard to the purpose of the 2011 Regulations and the gravity of the breach. The Regulations do not distinguish between a professional and non-professional Landlord such as the Respondent. The obligation is absolute on the Landlord to pay the deposit into an Approved Scheme.

14. In assessing the amount awarded, the Tribunal has discretion to make an award of up to three times the amount of the deposit, in terms of Regulation 10 of the 2011 Regulations.

15. The Tribunal considered the Respondent had admitted his failure to comply with the 2011 Regulations. The Respondent had explained this was down to ignorance on his part. He wholly accepted he was at fault. However, the Respondent paid the £500 deposit back to the Respondent in full approximately two weeks before the tenancy ended, prior to inspection of the Property. The deposit had accordingly been unprotected throughout the seven years of the tenancy.

16. Despite the Tribunal being satisfied that the Respondent had failed to comply with his duties under Regulation 3 (1) of the 2011 Regulations, the purpose of the 2011 Regulations had not been defeated. The deposit had been repaid before the tenancy came to an end. The Respondent had not attempted to deduct anything from the deposit, despite the Respondent's claim that there was extensive damage to the Property.

17. In all the circumstances the Tribunal considered that a fair, proportionate and just amount to be paid to the Applicants by way of sanction was the equivalent amount of the deposit.

Decision

18. The Tribunal accordingly made an Order for Payment by the Respondent to the Applicant 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.

30 April 2025

Legal Member **Date**