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 Scheme (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/CV/18/1352

Re: Property at 101 Causewayend, Couper Angus, PH13 9DX ("the Property")

Parties:

Mrs Florena Plop, 43 Leslie Street, Blairgowrie, PH10 6AW ("the Applicant")

Robertson Property Management, 3 Bank Street, Dundee, DD1 1RL ("the Respondent")

Tribunal Members:

Melanie Barbour (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that

Background

An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the 2017 Rules") seeking an order for payment of the deposit in relation to an assured tenancy for the Property.

The application contained a copy of the Tenancy Agreement. The Applicant advised that the Respondent had failed to submit the deposit of £650.00 to an approved scheme; and the deposit had not been returned to them, although they had left the Property on 1 April 2018.

The Applicant attended the case management discussion. Ms Anderson and Ms Mann both from Robertson Property Management appeared for the Respondent.

Notice of the Hearing together with a copy of the application and confirmation that the Respondent could make written representations in response to the application, had been served on the Respondent on 19 July 2018.

Written representations had been received from the Respondent and the Applicant before today's hearing.

As a preliminary matter the Applicant sought to amend the application to an application under Rule 103 an application for payment where the landlord has not paid the deposit into an approved scheme. There was no objection to this amendment by the Respondent. I allowed the amendment.

The Hearing

The Respondent advised that the Applicant and her husband had had an earlier tenancy arranged through them. Due to issues with neighbours they had requested an early release; this had been arranged with them moving to the Property in June 2017.

The Respondent advised that there had been a deposit paid for that first tenancy and it had been paid into an approved scheme, they provided evidence showing this.

When the Applicant moved to the Property, the deposit could not be automatically transferred in the scheme, it was therefore returned to the Respondent and they should then have put it back into the scheme. There had however been an oversight in the Respondent's office, and the money had not been returned to the approved scheme. They advised that they had been dealing with a number of deposits around that time and believed the paperwork must have been inadvertently filed together. They were aware of the regulations governing deposits and their duties, and had over 200 deposits lodged. They had a checklist to try and alleviate mistakes and they were reviewing procedures to ensure that this did not happen again. The Respondents had been in business since 2001.

The first deposit for the Applicant had been paid into an approved scheme.

They had not been aware that the deposit for the Property had not been put into an approved scheme until the current application was received from the tribunal.

Once they had become aware that the deposit had not been paid into an approved scheme, they arranged to have the money paid in. They provided documentary evidence that the deposit had now been paid into the Safe Deposits Scotland.

The Applicant did not dispute that the deposit had now been paid into Safe Deposits Scotland; however she advised that she had paid an additional £75 when they moved to the Property as the deposit had increased. She also agreed that the first deposit had been paid into an approved scheme.

The Applicant advised that the tenancy had ended as the Applicant and her husband were expecting a child and decided to purchase a property; they were to move into

their new property on 10 April. They provided 2 months' notice to the Respondents that they were leaving the tenancy and moved out on 1 April 2018.

The Applicant advised that there was then an email exchange between her and the Respondent's about the deposit and outstanding matters. She disputed that she should have to have 9 days rent deducted from the deposit and also, she noted that they were advising that she had to pay early termination fees; they did not advise her how much this was. She did not hear anything further from the Respondents after her final email to them on 10 April 2018. She later contacted all three schemes in May 2018 and they advised that they had no record of a deposit being held by them for the Property. Accordingly, she applied to the tribunal to seek to seek to have her deposit returned.

The Respondents advised that the lease was clear at Clauses 37 and 38 which dealt with termination of the lease and early termination charges.

They advised that the Respondent had tried to help secure another tenant for the property and they managed to get someone to take the tenancy beginning on 10 April 2018.

When it was brought to their attention that the deposit had not been paid, they had put it into a scheme then, they had also agreed to waive the early termination fees, but they were looking for the outstanding rent.

The Applicant considered that the Respondent should have confirmed the amount to be deducted from the deposit. She considered it was their responsibility to have provided more advice to her about the deposit, had they done so there may have been no need to proceed to the Tribunal.

The Respondent advised that they did not correspond further with the Applicant, as they were busy with other cases.

The Respondent advised that they were not aware that the deposit had not been returned to the Applicant, as it was sitting in their client account, and their final year accounts were not done until the end of May, and the book keeper had not raised any query about this amount sitting in the client account.

Findings in Fact

The Tribunal found the following facts to be established:

A tenancy agreement was entered into between the Applicant and the Respondent for the property and existed between the parties. It was entered into on 1 June 2017 until 1 June 2018.

Clause 5 of the tenancy agreement provided that rent of £525 was due per month in advance by the Respondent to the Applicant.

Clause 7 provides that a deposit of £650 will be paid by the Tenants and it will thereafter be paid into Safe Deposits Scotland. There is also provision for certain

monies to be deducted from the Deposit including meeting any outstanding costs, accounts, and rent arrears.

The deposit had been paid by the Applicant to the Respondent.

The Respondent had not paid the sum into an approved scheme.

The Respondent had previously paid a deposit belonging the Applicant into an approved scheme.

The deposit had now been paid into an approved scheme.

Reasons for Decision

Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 sets out the duties of the landlord who has received a deposit, included is that within 30 days he is required to pay the deposit to the scheme administrator of an approved scheme; and furnish the tenants with information required under regulation 42.

Part 2 of the Regulations is entitled "Sanctions" and provides that where regulation 3 has not been complied with, regulation 9 allows an application to be brought by the tenant within 3 months of the tenancy coming to an end

Regulation 10 provides that the tribunal if satisfied that the landlord did not comply with any duty in regulation 3 must order the landlord pay the tenant an amount not exceeding three times the amount of the tenancy deposit.

The Respondent did not pay the deposit into an approved scheme. It does appear that this was due to a clerical oversight. The Respondent accepted that they were aware of their duties to ensure that deposits are paid into schemes. They also advised that they currently had over 200 in approved schemes. They had paid the first deposit into a scheme.

They accepted that the repayment of the deposit had "*fallen of the way side*" at the end of the tenancy and other business had taken over.

It seems to me that that the Respondents did appear to have made a genuine error in not paying the deposit into the scheme.

I do not however consider the failure to follow up on the Applicant's email at the end of the tenancy to be reasonable, I consider that the Respondent should have made an attempt to resolve matters by contacting the deposit scheme (at which point they would have become aware that the deposit had not been paid into a scheme), and should have ensured the deposit was returned less any amount which the parties could sort out, through the formal mechanism of the scheme. This on-going failure to complete the ending of the tenancy does not appear to me to be reasonable or professional. Had it not been for the Applicant the deposit may still not have been paid back. I do consider that the Applicant was prejudiced by this conduct, even if it was again entirely accidental.

I am conscious that Respondent is a professional organisation who deal with these types of matters on a daily basis and should therefore have had a system of checks and balances in place in the beginning and the end of the a tenancy to ensure that deposits are properly held and then repaid subject to any allowable deductions in the lease.

I take into account that the money is now in a scheme and also, that the Respondent has agreed to waive the early termination fees.

Taking all matters into account, I do not think there was a flagrant disregard for the provisions of the regulations, however there does appear to have been a number of omissions which would appear to show a lack scrutiny and a failure of good practice. That said I note that they are reviewing practices to try and ensure it does not happen again. The Applicant will now be able to seek recovery of the deposit from Safe Deposits Scotland and she is not therefore subject to any further prejudice.

I do not think that this is the most serious case which could come before me, however I believe it is sufficiently serious that an award of a sum equivalent to the deposit itself, namely £650 less the early repay fee which has been waived £210, should be made against the Respondent, accordingly I award a sum of £440.00 in favour of the Applicant

On the basis of the evidence submitted, I consider that I should make an order for £440.00.

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.

Melanie Barbour

20.9.18

Legal Member/Chair **Date**