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

Chamber Ref: FTS/HPC/PR/19/1151

Re: Property at Flat 2, 75 Whitehall Road, Aberdeen, AB25 2PQ ("the Property")

Parties:

Mrs F M , , Aberdeen, ("the Applicant")

Mr Callum Falconer, 162G Rubislaw Mansions, Queens Road, Aberdeen, AB15 6WF ("the Respondent")

Tribunal Members:

Ewan Miller (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that (a) the Applicant should be granted an Order for Payment for the sum of NINE HUNDRED AND FIFTY POUNDS (£950) STERLING and (b) the deposit of FOUR HUNDRED AND SEVENTY FIVE POUNDS (£475) should be placed by the Respondent in to an approved scheme.

Background

The Applicant had let the Property from the Respondent. Upon the tenancy coming to an end, the Applicant had enquired about the return of the deposit and if it had been placed in to an approved scheme in terms of the Regulations. The Respondent failed to return the deposit or provide any information about it as per the Regulations and accordingly the Applicant applied to the Tribunal seeking a penalty to be imposed on the Respondent

Case Management Discussion ("CMD")

The Tribunal held a CMD at the Credo Centre, John Street, Aberdeen on 14 June 2019 at 11.30 am. The Applicant was present and represented herself. The Respondent was present and represented himself.

The Tribunal was satisfied that it had all the necessary information before it to allow it to make a decision at the CMD.

The Tribunal had before it:-

- The Applicant's application to the Tribunal dated 12 April 2019;
- A copy of the lease between the parties;
- A formal request dated 25 March 2019 from the Applicant to the Respondent seeking information regarding the deposit;
- Written representations from the Respondent dated 23 May 2019.

Findings in Fact

The Tribunal found the following facts to be established:-

- The Respondent was the owner of the Property
- The Respondent had let the Property to the Applicant from 2 March 2018
- The tenancy had ended in February 2019
- The Applicant had paid a deposit to the Respondent at the start of the tenancy in the sum of £475
- The Respondent had failed to lodge the deposit in any of the approved schemes under the Regulations and to provide any of the required information to the Applicant
- At the end of the tenancy the Respondent had refused to return the deposit and had retained it.
- The Respondent was in breach of the Regulations

Reasons for the Decision

The Respondent had accepted and confirmed both in his written submissions and verbally at the CMD that he had failed to comply with the obligations under Regulation 3 of the Regulations and had failed to put the deposit in to an approved scheme and provide the required information to the Applicant. The breach of the Regulations was therefore established.

The Respondent apologised for this. He advised that this was his only rental property in the UK and that her had acquired this from his ex-wife upon their separation. His ex-wife had managed the Property whilst they were together and he had not been properly aware of the Regulations regarding the holding of deposits.

The Applicant pointed out that ignorance of the law was no excuse and that the deposit had been held by the Respondent for a considerable period and she had been denied access to the independent dispute resolution scheme offered by the

approved schemes. She sought payment of an amount equal to three times the deposit.

The Tribunal was conscious of the Sheriff Court case of Jenson –v- Fappiano. In that case the Sheriff highlighted that the ability to award a maximum of 3 times the deposit was not an unfettered discretion but that the court, and now the Tribunal, should look at the whole circumstances in trying to reach a fair decision.

The Tribunal weighed the various facts and circumstances. In favour of the Respondent was the fact that he had acknowledged from the start to the Tribunal that he had erred in his knowledge of the law and accepted that he was in breach. He apologised for that. He indicated he had retained the deposit even after becoming aware of the obligations under the Regulations as he was of the view that the Applicant had breached the terms of the lease and he was entitled to utilise the deposit to remedy these alleged breaches.

Against the Respondent was the fact that ignorance of the law is no excuse. The primary purpose of the Regulations was to put the parties on an equal footing in relation to the return of the deposit. A landlord should not have the ability to unilaterally decide that a lease obligation has been broken and retain the deposit. It should be subject to determination by an approved scheme's dispute resolution procedures. The deposit had not been put on a scheme even when the Respondent had become aware of his breach.

Weighing the whole circumstances of the case, the Tribunal was of the view that a penalty of two times the deposit, i.e. £950, should be imposed against the Respondent in favour of the Applicant under the Regulations.

The Tribunal was aware from the parties' submissions that the question of the return of the deposit was still in dispute. The Applicant accepted there was around 10 days rental outstanding, however she disputed various costs the Respondent had incurred upon termination of the lease and was insistent it had been returned in a good condition.

The Tribunal was aware that in terms of Regulation 10(b) of the Regulations, it has the power to order the Respondent to pay the deposit in to an approved scheme. The Tribunal was of the view that this was an appropriate case to do so. There remained a dispute between the parties as to what should happen with the deposit. Had the Respondent complied with the Regulations then the Applicant would have been afforded the opportunity to utilise the dispute resolution scheme and be placed on an equal footing with the Respondent. By ordering the deposit to be placed in a Scheme the Tribunal was rectifying that position and allowing the matter to be resolved between them via the scheme. Either party could apply for its return once deposited.

The Tribunal noted the Applicant's request for interest at 8% to be applied from citation. The Tribunal was of the view that the judicial rate was excessive and that 4% was more appropriate and should be applied from the date of this decision.

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.

Ewan Miller

Legal Member/Chair

14/6/19

Date