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 Regulations 9 & 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations")

Chamber Ref: FTS/HPC/PR/19/2706

Re: Property at 16 Riverside Terrace, Aberdeen, AB10 7JD ("the Property")

Parties:

Mr Usman Shafiq, 3 Auriol Way, Maidenhead, SL6 1GF ("the Applicant")

Mr Alastair Graham, 25 Hyde Park, Stoneywood, Buckburn, Aberdeen, AB21 9JF ("the Respondent")

Tribunal Members:

Ewan Miller (Legal Member)

Decision
The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent had not breached the Regulations and accordingly the Applicant's case was dismissed.

Background

The Applicant had taken a lease of the Property in December 2015. As far as the Applicant was concerned he had leased the Property from the Respondent. He had paid a deposit of £950 and he alleged that the deposit had been unprotected from December 2015 until May 2016. He had been unable to resolve the matter with the Respondent and his letting agent and accordingly he had applied to the Tribunal for the matter to be resolved.

The Tribunal had before it the following information:-

- The Applicant's application to the Tribunal dated 20 August 2019
- A copy of a Safe Deposit Scotland certificate confirming lodgement of the deposit on 18 May 2016
- A lease purporting to be between the Respondent and the Applicant dated 21 December 2015
- Email correspondence from August 2019 between the parties
- Written submissions from the Respondent dated 1 December 2019 and including:-

- A lease between Alastair Graham and Wilma Graham as Landlord and AM-PM Serviced Apartments Limited dated 19 May 2014
- Copy bank statements from the Respondent showing payments to his account
- Letter dated 29 November 2019 from Corporate Accommodation Limited t/a AM-PM Leasing ("AM/PM2")

Case Management Discussion ("CMD")

The Tribunal held a CMD at Aberdeen Sheriff Court, 53 Castle Street, Aberdeen on 17 January 2019 at 10am. The Applicant attended via conference call and represented himself. The Respondent appeared in person and represented himself.

Findings in Fact

The Tribunal found the following facts to be established:-

- The Respondent and his wife were the owner of the Property
- The Respondent and his wife had entered in to a four year corporate let on 19 May 2014 with AM-PM Serviced Apartments Limited ("Serviced Apartments")
- On 21 December 2015 the Respondent's letting agent purported to enter in to a lease of the Property between the Applicant and the Respondent. The Applicant paid a deposit of £950 to Chiah Property Limited t/a AM/PM Leasing ("AM/PM1") on behalf of Serviced Apartments on taking up the tenancy
- In May 2016 Serviced Apartments exercised a break clause in their lease with the Respondent.
- The Respondent had agreed with Serviced Apartments that he would take over the sub-tenancy with the Applicant after the break of the lease between the Respondent and Serviced Apartments had occurred.
- The whereabouts of the deposit between December 2015 and May 2016 is unknown but is presumed to have been under the control of either Serviced Apartments or AM/PM1 and not to have been in an approved deposit scheme.
- The deposit was transferred by Serviced Apartments to the Respondent on 11 May 2016. The Respondent placed the deposit in to an approved scheme on 18 May 2016
- From May 2016 the Applicant ceased to pay rent to either Serviced Apartments or AM/PM1 and instead paid rent direct to the Respondent. The parties dealt directly with each other on all other matters relating to the tenancy from this point on. The parties did not deal with each other prior to that date
- The tenancy ended in August 2019. The parties amicably agreed some minor deductions to the deposit to reflect cleaning and minor damage. The balance of the deposit was returned to the Applicant by the Respondent via the approved scheme

Reasons for the Decision

Some explanation as to the history of the matter and, in particular, the status of the various companies involved in the leasing/management of the property would assist in explaining the rationale behind the Tribunal's decision.

The Respondent was approached by AM/PM1 and their "sister company" Serviced Apartments in 2014. The Aberdeen market for corporate and short term lets was buoyant and Serviced Apartments were looking to add more properties to their portfolio. They approached the Respondent and offered to enter in to a lease with him and his wife in 2014 of the Property for a four year. Serviced Apartments had an option to break the lease in May 2016.

The nature of that corporate let was that Serviced Apartments would grant short term lets to oil and gas businesses and/or workers temporarily residing in the Aberdeen area. The Respondent was not aware of who these lets were being granted to. He received a set income under the lease between himself and Serviced Apartments and had no knowledge or involvement in the underlying short term occupation.

Around October 2015 the Respondent was approached again by Serviced Apartments as the collapse in oil prices meant that the corporate let market was drying up. The Respondent agreed a price reduction in the lease between himself and Serviced Apartments to reflect this.

Around April 2016, Serviced Apartments indicated to the Respondent that they wished to exercise the May 2016 break. They or AM/PM1 advised the Respondent that a lease to the Applicant on a longer term basis had been granted and that the Respondent could take over that lease as landlord if he so wished. The Respondent agreed to do so and, in the fullness of time, the rental payments swapped over to the Respondent. The deposit was paid by Serviced Apartments to the Respondent in May 2016 and the Respondent swiftly placed it on deposit thereafter.

In the Respondent's submission, they had not been in breach as they were the landlord of Serviced Apartments and had not become the landlord of the Applicant until May 2016. The deposit had been put in to an approved scheme well within the applicable time.

The Respondent appeared to the Tribunal to be a credible and genuine individual. The Tribunal did not doubt his submission that he had no knowledge of the people occupying his property under the corporate let to Serviced Apartments. The Tribunal accepted his evidence that he was unaware that a short assured tenancy had been granted until around April 2016 when he had discussions with AM/PM1 regarding taking over the tenancy to the Applicant that he believed had been granted by Serviced Apartments. He believed he had acted appropriately from May 2016 and had only become the landlord at that point. As the deposit had been placed in an approved scheme timeously from May 2016 there was no case to answer against him and he sought dismissal. The Applicant did not question the Respondent's narrative and accepted that there had been other arrangements in the background.

The issue, from the Applicant's perspective, was that the lease granted to him in 2015 narrated Mr Graham as the landlord. He therefore submitted that as he was not aware of the corporate let or any other of the background information that he was

entitled to assume the Respondent was his landlord. The fact of the matter was that he had paid a deposit in December 2015 and it was not protected until May 2016. He did not have any issue with the Respondent per se (and indeed both parties fully understood the position the other found themselves in and had an amicable relationship despite the deposit issue), he simply took the view that there had been a breach of the regulations and as his lease stated Mr Graham was the landlord it was ultimately his responsibility.

The Tribunal, however, did not agree with this interpretation, although the Tribunal did have a significant degree of sympathy for the Applicant.

There was no dispute that there had been a breach of the Regulations. Both parties were agreed on that. The deposit did not appear to have been placed on an approved scheme when paid in 2015. Its whereabouts between December 2015 and May 2016 remained unknown to both parties although it was a reasonable supposition that it was held by either AM/PM1 or Serviced Apartments

The Tribunal was satisfied that the Respondent and his wife had granted a valid lease for four years to Serviced Apartments. That lease remained in place and rent was paid by Serviced Apartments to the Respondent up until its break in 2016.

The Tribunal noted the terms of a letter from AM/PM2 dated 29 November 2019. AM/PM1 had ceased trading and had been dissolved on 29 June 2019 but the business appeared to have been taken over by AM/PM2, with all or some of the same individuals behind AM/PM1 involved. In any event AM/PM2 advised that AM/PM1 had made an administrative error in narrating the Respondent as the landlord as it should have been Serviced Apartments. They confirmed that the lease with the Applicant had been entered in to by Serviced Apartments without any knowledge or input by the Respondent. The rent and deposit had been paid by the Applicant to Serviced Apartments until May 2016. As far as they were concerned it was only in May 2016 that the Respondent became the landlord again once the corporate let between the Respondent and Serviced Apartments fell away.

The Tribunal considered and understood why the Applicant had assumed the Respondent was his landlord in December 2015. However, it was simply not competent for the Respondent to be the landlord at that point in time, at least in relation to the Applicant. The Respondent and his wife had already granted a lease to Serviced Apartments in 2014 that was still running. They could not competently grant another lease of the Property. Whilst Mr Graham was narrated as the landlord, his wife was not mentioned and she ought to have been. The Respondent had not signed the lease. It had been signed by AM/PM1 but it was not clear on what basis they had signed. There was no reference to them signing as agent.

The Tribunal considered whether via the laws of agency the Respondent could have taken the place of Serviced Apartments as landlord. However, the Respondent had given no authority for a short assured tenancy to be entered in to. He was unaware of the activities of AM/PM1 and Serviced Apartments. He and his wife had already created a tenancy interest to a third party. AM/PM1 did not appear to be acting as an agent for a disclosed principal in relation to the Respondent in agreeing the lease with the Applicant. AM/PM2 had confirmed that the reference to Mr Graham was an

administrative error. All monies had flowed from the Applicant to AM/PM1 or Serviced Apartments before going to the Respondent and his wife. Accordingly, whilst it was clear there was an error in the 2015 lease to the Applicant, the underlying position was that there was a head lease by the Respondent and his wife to Serviced Apartments and a sub-let by Serviced Apartments to the Applicant. This was reflected in the change of arrangements between the parties when the head lease came to an end in May 2016 and the Respondent took back responsibility and funds were paid direct to him.

Accordingly, with some degree of sympathy to the Applicant, the Tribunal determined that the reference to Mr Graham in the 2015 was simply an error and did not have the legal effect of substituting him as landlord. He was only landlord to Serviced Apartments. As he only became landlord to the Applicant in 2016 he had not breached the Regulations as he had dealt with the deposit at the point he had become landlord to the Applicant.

The Tribunal was, however, satisfied that there had been a breach of the Regulations. However, this had been a breach by Serviced Apartments between December 2015 and May 2016. The Tribunal noted that Serviced Apartments had changed its name to Fried Properties (UK) Limited but that this company had been dissolved. The role of AM/PM1 in the matter was also a little cloudy in the view of the Tribunal. However, any possible claim against them was now impossible as that company too had been dissolved. AM/PM2 appeared to trade with the same name and personnel as AM/PM1 but there was no legal or contractual connection between the two. The Tribunal did also note that as at the date of the hearing there appeared to be no current officers appointed at Companies House for AM/PM2. Accordingly whilst the Applicant had a claim against Serviced Apartments and possibly AM/PM1 under the Letting Agent Code of Conduct, the parties were dissolved and he was left without remedy. The Applicant had the sympathy of the Tribunal although they were pleased to note that the deposit had ultimately been protected and returned with agreement of the Applicant by the Respondent

In any event, even had the Tribunal determined that the Respondent was the landlord at December 2015 they would have taken the view that the level of culpability of the Respondent was at the absolute lowest end of the scale. The fault lay with others. The most token of penalties would have been imposed upon the Respondent in those circumstances.

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.

E.Millar

17/1/2020

Legal Member/Chair **Date**