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/PR/18/1471

Re: Property at Flat 1 and subsequently Flat 8, Hillview Apartments, York Road, Newton Stewart, DG8 6JS ("the Property")

Parties:

Mrs Caroline Edmonds, 23 Glebe Crescent, Newton Stewart, DG8 6LP ("the Applicant")

RH23 Ltd, 56 Cumberland Road, Belfast, BT16 2BA ("the Respondent")

Tribunal Members:

Ewan Miller (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment of ONE THOUSAND FIVE HUNDRED POUNDS (£1500) should be granted in favour of the Applicant against the Respondent

Background

The Applicant was the tenant of the Respondent in relation to Flat 1 then Flat 8 Hillview Apartments, York Road, Newton Stewart. The Applicant alleged she had taken a tenancy of Flat 1 and then the Respondent had decided to sell this flat. The Applicant had then moved to Flat 8 within the same block. The Applicant alleged that the Respondent had agreed that their lease and deposit would be transferred to Flat 8.

In due course the Applicant moved out of the Property and sought repayment of her deposit.

As a result of the alleged failure on the part of the Respondent to return the deposit the Applicant phoned the three deposit protections services to find out where it was

located but was told none of them had it. On that basis the Applicant lodged an application under Rule 103 with the Tribunal dated 8 June 2018.

A number of Case Management Discussions (CMD) were held by teleconference. Due to issues regarding service on the Respondent and non-availability by the Applicant no meaningful discussion was achieved on the first two CMD's and they were continued to a third CMD on 30 April 2019.

On 14 February 2019 a Notice of Direction was issued to the Respondent requiring the Respondent to make written representations to the Tribunal regarding the allegations contained in the Applicants application. No response was forthcoming.

CMD

A CMD was held by teleconference on 30 April 2019. The Applicant joined the call and represented herself. The Respondent did not join the call and was not represented.

The Tribunal noted that the Notice of Direction and letter informing the Respondent of the CMD had both been sent to the Respondent (a company) at their Registered Office by recorded delivery. Both recorded deliveries had not been called for by any office of the Respondent. On an earlier CMD teleconference, a Hugh Mulgrew, an agent of the Respondent, had taken part. The Tribunal office had sent both the notification of the CMD and the Notice of Direction to him on an email he had used previously to contact the Tribunal. Neither email bounced back. The Tribunal staff had also left messages for Mr Mulgrew

The Tribunal required to consider whether appropriate notification had taken place and whether it was appropriate to continue in the absence of the Respondent. The Tribunal concluded that it was appropriate to continue and also to reach a decision. The notification and direction had been sent to the registered office of the Respondent. The Tribunal checked Companies House online during the CMD and noted that this was still showing as the correct address. If a company chooses not to collect recorded delivery mail then it does so at its own risk. The Tribunal admin staff had emailed the representative of the Company who had been in touch previously. The emails had not bounced back. The Tribunal staff had left messages for the representative as well. In the circumstances it was not clear what more the Tribunal could do. The application had been made over 10 months ago and it was not practical to keep continuing the matter any longer. The Tribunal had sight of text messages from Mr Mulgrew from a few weeks ago to the Applicant regarding repayment of the deposit (although no positive action had been forthcoming) so it was clear the Respondent or their representative was aware of the issue. The Tribunal was satisfied that it was appropriate to continue and reach a decision.

Findings in Fact

The Tribunal found the following facts to be established:-

- The Respondent was or had been at the relevant time the owner of the Property

- The Applicant had taken a lease of Flat 1 from the Respondent around 1 August 2017
- On 1 December 2017 the Applicant had moved to Flat 8 owned by the Respondent as the Respondent had sold Flat 1
- The Applicant gave notice to the Respondent to terminate the lease of Flat 8 with effect from 4 June 2018
- The Respondent had agreed to the Applicant moving to Flat 8 from Flat 1 and to the transfer of the deposit paid for Flat 1 to Flat 8
- The Respondent had received a deposit of £500 from the Applicant
- The Respondent had failed to lodge the deposit with one of the approved deposit protection schemes.
- The Respondent was in breach of the Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011

Reasons for Decision

The Tribunal found the evidence of the Applicant to be compelling during the teleconference. The Applicant came across as honest and forthright. She was aware of the legislation and had taken steps to address the issues with the Respondents. She appeared balanced and reasonable in her attitude. There was no evidence from the Respondent to contradict anything that had been said or submitted by the Applicant. Other than some brief input at an earlier CMD the Respondent had failed to engage with the Tribunal and had failed to comply with a Direction.

The Tribunal accepted the Applicant's evidence that they had taken a lease of Flat 1 and paid a deposit of £500 – a receipt for £500 from an agent of the Respondent had been produced in this regard. The Tribunal accepted that the Applicant had moved from Flat 1 to Flat 8. It seemed likely, on the balance of probabilities, that the Respondent had allowed the lease and deposit to transfer. The Tribunal accepted the Applicant's evidence in this regard. The Applicant appeared to have properly terminated the lease.

There was email evidence lodged by the Applicant that showed she had enquired about the whereabouts of the deposit and how it would be returned to her. There was no evidence from the Respondent to show that the deposit had been lodged. The Applicant had checked with the tenancy deposit schemes who had told her they did not hold it. On the balance of probabilities it appeared to the Tribunal that the Respondent had failed to comply with Regulation 9 of the relevant regulations. The deposit had not been returned to her.

Mr Mulgrew had exchanged text messages with the Applicant's partner to make contact and to say the deposit would need to be returned. Nothing further appeared to have happened though.

Looking at the whole of the circumstances, the Tribunal accepted the Applicant's evidence.

The Tribunal has the power to award up to 3 times the rental deposit. The Tribunal should act reasonably in exercising its discretion in this regard and consider the circumstances and the behaviour of the Respondent. In the circumstances, the

Tribunal determined to award the maximum amount of 3 times the deposit to the Applicant.

It appeared to the Tribunal that the Respondent had not ever lodged the deposit and it had been unprotected for the whole period of the tenancy. The Respondent had failed to return the deposit itself or give a reason why it felt able to retain it. The Respondent had failed to comply with the Notice of Direction issued to the Tribunal. The representative had made a half hearted attempt to exchange text messages with the Applicant but had not actually done anything of substance. Viewed in the round, the Respondent had behaved poorly and failed to make any effort to comply with the relevant regulations. In those circumstances the Tribunal was content it was in order to award a sum equal to three times the deposit.

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 Miller

Legal Member/Chair

30/4/19

Date