Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011/176 and under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/PR/18/1504

Re: Property at 79 Causewayhead Road, Stirling, FK9 5EG ("the Property")

Parties:

Mrs Christie Laughland, 59C Wallace Street, Stirling, FK8 1NX ("the Applicant")

Busby Property Co. Limited, (Company Number SC058560), 28 Field Road, Busby, Glasgow, G76 8SE ("the Respondent")

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. This is an application by the Applicant for an order for payment where landlord has not paid the deposit into an approved scheme under regulation 9 (court orders) of the *Tenancy Deposit Schemes (Scotland) Regulations 2011/176* in terms of rule 103 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended ("the Procedure Rules"). The tenancy in question was a Short Assured Tenancy of the Property by the Respondent to the Applicant commencing on 1 August 2017 and concluding on 30 June 2018.

2. The application was dated 17 June 2018 and lodged with the Tribunal shortly thereafter. The application relied upon evidence that a deposit of £325 was due in terms of the tenancy, paid to the Respondent around the commencement of the tenancy, but not paid into an approved scheme at all.

3. The application further requested that the Applicant wished "to be ensured that I will receive my deposit back under the terms of the contract". From the submissions before me, it was clear that this claim remained and was a contractual claim which would an application for civil proceedings in relation to an assured tenancy in terms of rule 70 of the Procedure Rules. I was satisfied to deal with both matters under the same application process.

The Case Management Discussion

4. On 18 December 2018, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at Wallace House, Stirling, there was appearance by the Applicant.

5. There was no appearance by the Respondent. The Applicant confirmed that no contact had been received from the Respondent in regard to the application and that she had found the Respondent had been unresponsive as a landlord during the duration of the lease. I was advised of no contact received from the Respondent by the Tribunal. I was satisfied in the circumstances to proceed in the absence of the Respondent.

6. I sought further oral submissions and evidence from the Applicant as to the background and her position at the CMD. She further provided a print from her online banking showing payments made by her to the Respondent for the deposit and rent.

7. During the course of the CMD, the Applicant confirmed that she had, via a former flatmate, received return of £200 against her deposit in or around August 2018. She still sought the balance of £125 as well as an order for payment of up to three times the tenancy deposit (ie up to £975 in this case).

8. After the Applicant had concluded her submissions, I adjourned the CMD and sought to make contact with Stirling Council's Multiple Occupancy team to seek more information on the HMO licence for the Property, as this had been raised by the Applicant during her submissions. I spoke with Gregor Whiteman, Assistant Analyst, in that team and obtained information from him on both the HMO licence and, through him, information as to publicly available information from Registers of Scotland confirming that the Respondent was the owner of the Property. I further consulted with the Scottish Landlord Registration website on the day of the CMD.

Findings in Fact

9. The Respondent, as landlord, let the Property to the Applicant under an assured tenancy dated 12 April 2017 ("the Tenancy").

10. The Property had four tenants, all in receipt of separate tenancy agreements.

11. The duration of the Tenancy was from 1 August 2017 to 30 June 2018.

12. The Tenancy was brought to an end on or about 30 June 2018.

13. In terms of the Tenancy, the Applicant was obligated to pay a deposit of £325 at the commencement of the Tenancy.

14. The Applicant paid a deposit of £325 to the Respondent on or about 25 May 2017.

15. On or about 1 February 2018, Stirling Council's Multiple Occupancy team – having been engaged with the Property and its occupants due to a faulty boiler – informed the occupants (including the Applicant) that they could not identify any approved scheme holding the occupants' (including the Applicant's) tenants' deposits under *Tenancy Deposit Schemes (Scotland) Regulations 2011/176.*

16. In or around February 2018, the Applicant's flatmate Robin Devlin contacted the Respondent to seek information as to whether all the tenants' deposits had been placed into approved schemes under the 2011 Regulations. The Respondent did not respond.

17. The Respondent has been landlord of the Property since 2008.

18. A licence to operate the Property as a House in Multiple Occupancy has been held by Clark Perry since 2009, with the current licence dated 30 November 2017.

19. Clark Perry, said to be "c/o" the Respondent, is registered as the landlord of the Property on the Scottish Landlord Registration register.

20. In or around August 2018, the Respondent communicated with Robin Devlin regarding return of £600 of deposit monies due to her, the Applicant, and one other flatmate. The Respondent stated that the balance (being £700) was being retained in regard to damage to the Property said to have been caused prior to the commencement of the Tenancy. The Applicant received £200 of this money as part-repayment of her deposit. A sum of £125 from her deposit remains held by the Respondent.

21. At the conclusion of the Tenancy, the Applicant has not been afforded access to the adjudication scheme under Tenancy Deposit Scheme in terms of her tenancy deposit for the Property.

22. On 26 November 2018, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD of 18 December 2018.

Reasons for Decision

23. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. In light of the submissions by the Applicant, the further information obtained from Stirling Council, and the failure by the Respondent to communicate with the Tribunal, I was satisfied both that the necessary level of evidence had been provided through the application, further papers, and orally at the CMD, and that it was appropriate to make a decision under regulation 10 of the 2011 Regulations at the CMD.

24. The core factual issues were uncontested by the Respondent due to its non-appearance and non-cooperation. The Respondent had not placed the sum with an approved provider timeously. Further, as per the submissions at the CMD, the Respondent had handled the deposit in cash when returning the arbitrary amount of £600 to Ms Devlin, showing that the Respondent was still in control of the funds at that time. By handling the funds in such a fashion the Respondent was acting in precisely the way the 2011 Regulations had been set up to avoid; the retaining of sums on apparently spurious grounds, and handling them in an unprofessional fashion. In this case, the sums were said to be retained against damage that had occurred before the commencement of the Tenancy. The Applicant explained that Ms Devlin had been the main contact with the Respondent as she had been a tenant the year previous as well. The Respondent was said to be retaining funds from current deposits against damage caused by previous tenants, using Ms Devlin's occupation across both periods as an excuse for doing so. Whether any such justification could be made for treating Ms Devlin's deposit in this fashion, and indeed even if the Applicant was entirely misinformed as to the purported reason for withholding part of her deposit, it was clear that the Respondent was acting in a way that the 2011 Regulations were set up to avoid.

25. There was a flagrant disregard notable in the Respondent's dealing with the deposit, as well as a casual attitude to its obligations, duties, and the regulations under which it was supposed to operate. Along with the above issues regarding the deposit, I was concerned as to the Respondent:

- Failing to obtain an HMO licence in the company's name;
- Failing to register as a landlord in the company's name; and
- Being the subject of a previous application under Rule 103 before this Tribunal (PR/18/0576). In that application, the Respondent again failed to appear or make any submissions. A decision in that application was issued on 15 May 2018, so before this application was raised and long before the Respondent was intimated with this application.

Further, the Applicant was critical of the Respondent's actings as a landlord and explained that the occupants were without a working boiler for two months, before an intervention by Stirling Council's Multiple Occupancy team resulted in it being fixed. The Applicant understood that the Respondent's director, Clark Perry, was frequently abroad and hard to contact yet declined to appoint a reputable letting agent or property manager to deal with matters. At least in regard to the handling of deposits, the 2011 Regulations also seek to resolve such issues of communication.

26. The Applicant submitted, and the Respondent did not dispute, that the deposit was not lodged long after the 30 working days afforded by regulation 3 of the 2011 Regulations. In the circumstances, in terms of regulation 10, I was mandated to grant an order against the Respondent and required only to consider the amount (being an amount between £0.01 and £1,200.00).

27. I am guided by the comments of Sheriff T Welsh QC in *Jenson v Fappiano*, 2015 SC EDIN 6, at paragraph 15 that "the quantification of sanction is not measured by loss or prejudice suffered by the tenant, nor, may I say, should it be measured only ... subjectively. There must be an objective basis and rationale to the sanction." As for grounds for sanction of the Respondent, the Applicant's submissions disclosed three:

- That the deposit had been unprotected since commencement of the Tenancy;
- That the Respondent was generally uncommunicative on all matters, including the deposits; and
- The Respondent had arbitrarily returned £600 to one tenant, leaving her to make arrangements with her flatmates, with the Respondent retaining the rest against vague and historic issues (which did not appear to apply to the Applicant).

28. I find all three issues to be significant. I reviewed case law on the 2011 Regulations, in particular so as to seek an objective approach to sanction as Sheriff T Welsh QC had sought in the case referred to above. The Respondent appears to be a 'professional landlord' and has, at least, rented out the Property (with an incorrect HMO licence) since 2009. I agree with the pursuer's submissions in *Fraser v Meehan, 2013 S.L.T. (Sh Ct) 119* (at p120) that "The payment is not a form of compensation. It should be considered a form of sanction and requires to be such amount as will act as a deterrent to landlords." The Respondent seems undeterred thus far, not participating in this application, even in light of the previous sanction from this Tribunal (where three times the deposit was awarded in favour of one of the Applicant's former flatmates).

29. In the circumstances, I regard the maximum allowed sanction to be appropriate and award £975 under regulation 10 of the 2011 Regulations. In regard to return of the deposit itself, as this is a contractual matter which does not engage the 2011 Regulations (as the sums have not been

lodged, even belatedly), I do accept the evidence that £125 remains outstanding and that no material claim for breach under the lease has been advanced by the Respondent against the Applicant. I therefore order payment of £125 being the balance of the deposit as yet unpaid.

30. No motion for expenses was moved and in the circumstances I would not have regarded an award of expenses as appropriate in any case.

Decision

31. In all the circumstances, I was satisfied to grant an order against the Respondent for payment of the sum of £1,100 to the Applicant.

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.

J Conn

18 December 2018

Legal Member/Chair **Date**