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/19/0434

Re: Property at 88a Hamilton Place, Aberdeen, AB15 5BA ("the Property")

Parties:

Miss Jade Sheach, represented by Mrs Jan Sheach, of the same address, 20 Craig Gardens, Newton Mearns, East Renfrewshire, G77 6JT ("the Applicant")

Mr Niall Reid, 16 Strathearn House, Auchterarder, Perthshire, PH3 1JL ("the Respondent")

Tribunal Members:

Jim Bauld (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent should be ordered to make payment to the Applicant of the sum of ONE THOUSAND THREE HUNDRED AND FIFTY POUNDS (£1350).

Background

1. This application is linked to an application under reference number FTS/HPC/CV/19/0659. In that application, the Applicant sought payment of £450 being a deposit paid in respect of a tenancy at the property. In this application, the applicant seeks a payment order in terms of Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 in respect of an alleged failure by the respiondent to comply with those regulations A Case

Management Discussion took place on 11 June 2019 and the application was continued to the hearing which took place on 26 July 2019.

The Hearing

2. The hearing initially considered the matters raised under the other application under reference FTS/HPC/CV/19/0659.

3. The Tribunal thereafter turned its attention to the application made in respect of the alleged failure by the Respondent to lodge the deposit with an approved tenancy deposit scheme.

4. It became clear very quickly that the Respondent admitted that the deposit had not been paid to the tenancy deposit scheme. The Respondent made a clear admission to the Trribunal that he described as "an admission of guilt". The Respondent indicated his offer that he would repay the balance of the deposit if the Applicant would agree to withdraw this application. The Applicant's representative indicated that she was not willing to accept that proposal.

5. The Applicant's representative indicated that the Respondent was a Landlord who owned serveral properties in Aberdeen including two which were subject to the Houses in Multiple Occupation (HMO)Licensing Scheme. She regarded the Respondent as a Landlord with specific knowledge of the relevant Regulations and she asked that the Tribunal make the maximum award possible in this case.

6. The Tribunal then heard from the Respondent. He admitted that he owned two other properties in Aberdeen and confirmed both were occupied by students and both had HMO Licences. The Respondent then claimed that this particular property had been his own residence in Aberdeen and that his intention was not to rent it to students. His intention was to try to let it to a professional couple or similar. However he quickly conceded after being

questioned by the Applicant's representative that the property had been let to three students in the year before the Applicant had started to occupy it. He admitted he did not have a HMO Licence for the property and again confirmed that he was aware of the relevant provisions of the HMO Licensing Schemes which required a property being occupied by three unrelated individuals to be so licensed. He admitted under questioning from the Tribunal that he had leased three separate bedrooms within this property to three separate named individuals. Each of those leases was for a sum of £450 per month. Each of those leases had a single named tenant and each of those leases had a guarantor named in the lease agreement. The Respondent also agreed that he had purported to lease these properties using a Short Assured Tenancy. On being questioned by the Tribunal why he had used this type of tenancy when it had been abolished in December 2017 he indicated that he was unaware of the change in legislation. He indicated he had previously used a letting agent called Winchester Lettings but did not use them for the property at 88 Hamilton Place.

7. It appeared from the documents which had been lodged with the Tribunal that the Applicant had noticed problems with the flat in or around October and had complained about the state of repair. The Applicant decided that she wished to leave the property but was advised by the Respondent that she was effectively tied to the tenancy for a period of time and could not simply give notice and leave. The Applicant sought advice from Shelter and was advised that the tenancy agreement which she had been given was incorrect and that she was subject to the new private residential tenancy scheme. She was advised that she was entitled to terminate that tenancy simply by giving 28 days notice.

8. Even after being advised of this, the Respodent continued to attempt to advise the Applicant her deposit could only be released when the other occupants of the other two bedrooms agreed to accept that they were responsible for the communal areas of the property.

9. On being questioned by the Tribunal, the Respondent accepted that there was no communal liability with respect to the 3 tenancies. He had created three individual separate tenancies with 3 individual separate rooms. A further email was produced to the Tribunal from the Respondent to the other two tenants of the other rooms in the property indicating that he would only release the Applicant's deposit when they accepted they were happy for that to be done and they accepted responsibility for the communal areas.

Findings in Fact

10. The parties entered into a tenancy agreement in respect of the property which commenced on 1 July 2018. The Applicant paid to the Respondent a deposit of £450. The Respondent was under a duty in terms of the Tenancy Deposit Scheme Regulations to make payment of that deposit into an approved Tenancy Deposit Scheme within 30 working days of the commencement of the tenancy.

11. The deposit was paid to the Safe Deposit Scotland tenancy deposit scheme on 8 February 2019. The respondent accordingly failed to make payment of the deposit into an approved Tenancy Deposit Scheme within 30 working days of the commencement of the tenancy.

Reasons for Decision

12. This application related to the failure of the Respondent to place a tenancy deposit within an approved tenancy deposit scheme. Landlords have been required since the introduction of the 2011 Regulations to pay tenancy deposits into an approved scheme within 30 working days of the commencement of the tenancy. In this case it was accepted that the Landlord had failed to do so. Accordingly he was in breach of the duties contained in Regulation 3 of the 2011 Regulations. Those duties are twofold. There is a

requirement to pay the deposit to a scheme administrator and the requirement to provide a Tenant with specified information regarding the tenancy deposit. The Respondent failed in both duties.

13. Regulation 9 of the 2011 Regulations indicates that if a Landlord does not comply with any duty in regulation 3 then the Tribunal must order that a Landlord makes payment to the Tenant of an amount "not exceeding 3 times the amount of the tenancy deposit". Accordingly in this case the Tribunal required to make an order for payment. The only matter to be determined by the Tribunal is the amount of the payment.

14. In this case the Tribunal carefully considered the evidence which had been produced. The evidence was of a Landlord who had knowledge of the relevant law and practice. There was evidence that this Landlord was operating an unlicensed HMO. There was clear evidence that he had failed to pay the tenancy deposit into the appropriate scheme for a period of almost 8 months and indeed did not pay this particular deposit into the scheme until after the Tenant had left.

15. The Tribunal noted that in a recent Upper Tribunal decision (reference 2019 UK 39 UTS/AP/19/0023 that Sheriff David Bickett sitting on the Upper Tribunal had indicated that it was appropriate for the Tribunal to differentiate between Landlords who have numerous properties and run a business of letting properties as such, and a Landlord who has one property which they own and let out. The Sheriff indicated in the decision that it would be "inappropriate" to impose similar penalties on two such Landlords.

16. Prior to the jurisdiction to determine these applications becoming part of the jurisdiction of the First-tier Tribunal, the applications were determined in the Sheriff Court. There were numerous Sheriff Court decisions which have been reported.

17. In many of these cases, the Sheriff Courts have indicated that the Regulations were introduced to address what was a perceived mischief and that they will be meaningless if not enforced.

18. In a decision by Sheriff Principal Stephen at Edinburgh Sheriff Court in December 2013, the Sheriff Principal indicated that the court was "entitled to impose any penalty including the maximum to promote compliance with Regulations". (Stuart Russell and Laura Clark v. Samdup Tenzin 2014 Hous.L.R. 17)

19. The Regulations were introduced to safeguard deposits paid by Tenants. They were introduced against a background of Landlords abusing their position as the holder of deposit moneys. The parliament decided that it should be compulsory to put the deposit outwith the reach of both the Landlord and the Tenant to ensure that there was a dispute resolution process accessible to both Landlord and Tenant at the end of a tenancy and which placed them on an equal footing. The Regulations make it clear that the orders to be made by Tribunals for failure to comply with the Regulations are a sanction or a penalty. During the course of the hearing, the Respondent seemed to think that this scheme was introduced to compensate the Tenant for harm done. It is not. The regulatory sanction is there to punish Landlords for non-compliance with the rules.

20. In this case, the Respondent was in flagrant and blatant breach of the Deposit Scheme Regulations. He had issued three separate tenancy agreements relating to this property and in each of the tenancy agreements he made specific reference to the deposit and to the requirements to place the deposit into a tenancy deposit scheme. He was a Landlord who rented not only this property but two other significant properties within Aberdeen. He had been a Landlord for a number of years. He could not have been unaware of the requirement to place the deposit in the approved tenancy deposit scheme.

21. He offered no mitigation at all with regard to his failure and the Tribunal also noted his conduct after this Applicant removed from the property where he seemed to attempt to hold her to a form of tenancy which had been abolished months earlier.

22. In all the circumstances, the Tribunal took the view that this was an egregious breach of the Regulations and it should be marked by the maximum penalty available. Accordingly the Tribunal determined to award three times the deposit namely £1350.

Decision

23. The Tribunal awards payment of ONE THOUSAND THREE HUNDRED AND FIFTY POUNDS(£1350) to be paid by the Respondent 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.

Jim Bauld

Legal Member/Chair 9 August 2019 **Date**