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 Regulation 9 and 10 Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations")

Chamber Ref: FTS/HPC/PR/20/1775

Re: Property at The Stables, Critchie House, Stuartfield, Peterhead, AB42 5DY ("the Property")

Parties:

Mr Brian Adams, 42 Hamewith Court, Alford, Aberdeenshire, AB33 8QW ("the Applicant")

Mr Geordie Burnett Stuart, Critchie House, Stuartfield, Peterhead, Aberdeenshire ("the Respondent")

Tribunal Members:

Josephine Bonnar (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment of the sum of £750 should be made in favour of the Applicant.

Background

1. By application received on 21 August 2020, the Applicant seeks an order in terms of Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and Regulation 9 and 10 of the 2011 Regulations. The Applicant lodged a copy private residential tenancy agreement and emails from Safe Deposit Scotland, My Deposit Scotland, and Letting Protection Service in support of the application. The tenancy agreement states that a deposit of £300 is payable. The emails from the tenancy deposit schemes state that the Applicant's deposit was not lodged with them.

2. The application was served on the Respondent by Sheriff Officer on 18 September 2020. Both parties were advised that a Case Management Discussion ("CMD") would take place on 16 October 2020 by conference call.

This was postponed due to the Applicant being in hospital. On 22 October 2020, parties were advised that the CMD would take place by telephone conference call on 23 November 2020 at 11.30 am. Prior to the CMD both parties lodged representations by email

3. The application called for a CMD on 23 November 2020 at 11.30am. Both parties participated.

Case Management Discussion (CMD)

4. The Legal Member discussed the application with both parties and noted that the following facts are agreed; -

(i) The tenancy started on 14 April 2019 and a deposit of £300 was paid by the Applicant to the Respondent.

(ii) The tenancy terminated on 28 July 2020.

(iii) The deposit of £300 was not lodged in an approved tenancy deposit scheme by the Respondent.

(iv) The Respondent returned the full deposit of £300 to the Applicant about a month before the tenancy ended.

5. Mr Adams advised the Legal Member that there were no discussions between the parties about the deposit until a month or so before the end of the tenancy. He then advised Mr Burnett Stuart that he was aware that the deposit had not been secured and demanded that it be returned to him. Mr Burnett Stuart immediately arranged for the money to be returned. Mr Adams stated that he had lost trust in Mr Burnett Stuart because of another tenant's experience regarding her deposit, and this was the reason for his demand. He also advised that he had incurred financial costs as a result of having to move from the property, and that the only money paid to him by Mr Burnett Stuart had been the deposit and a sum of money to re-imburse him for a shed he had erected at the property.

6. Mr Burnett Stuart advised the Legal Member that he fully accepted that he had not complied with the Regulations. He said that he objected to any fine imposed being paid to Mr Adams. He also stated that he had already been fined for his failure to lodge a deposit in another case under Chamber Reference PR/20/1563 and felt it was unfair on him to be facing another fine for the same breach. He advised the Legal Member that he is a farmer and that the properties he lets out are the cottages on his land. He has been doing this since the 1970's and has eight properties. He further advised that some problems had arisen with Mr Adams and he was asked to leave the property. He became very difficult as a result of his friendship with another tenant. The application seems to be his revenge. When asked for an explanation for failing to lodge the deposit he explained that the obligations introduced by the 2011 Regulations had seemed

too onerous. He found the idea of dealing with a tenancy deposit scheme off-putting and thought he could just ignore it, as he always returned tenants deposits anyway. He said it was laziness and a dislike of paperwork that was behind his actions. He referred the Legal Member to the previous Tribunal case, when he was fined. He stated that his daughter, who manages the properties, has recently lodged two deposits for current tenancies. He also stated that he does not always take deposits from tenants. He feels that an award in favour of the Applicant is inappropriate because he thought they had resolved the issues between them when he paid for the shed and repaid the deposit. He also stated that when someone moves home it is inevitable that there will be associated costs.

Findings in Fact

7. The Applicant is the former tenant of the property in terms of a private residential tenancy agreement.

8. The Respondent is the owner and landlord of the property.

9. The Applicant paid a deposit of £300 at the start of the tenancy in April 2019.

10. The tenancy terminated on 28 July 2020

11. The deposit was not lodged by the Respondent in a tenancy deposit scheme

12. The deposit was returned to the Applicant a month before the tenancy came to an end.

Reasons for Decision

13. Regulation 3 of the 2011 Regulations states – "(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy – (a) Pay the deposit to the scheme administrator of an approved scheme; and (b) Provide the tenant with the information required under regulation 42.

14. The Legal Member is satisfied that the Applicant's tenancy was a relevant tenancy in terms of the 2011 Regulations, that a deposit of £300 was paid and that it was not lodged in an approved deposit scheme by the Respondent. The Legal Member also notes that the application was lodged with the Tribunal on 21 August 2020, less than three months after the tenancy ended. The Applicant has therefore complied with Regulation (9)(2) of the 2011 Regulations.

15. Regulation 10 of the 2011 Regulations stipulates that if the Tribunal is satisfied that the landlord did not comply with a duty in terms of regulation 3, it " (a) **must**

order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit." The Legal Member therefore determines that an order must be made in favour of the Applicant.

16. The Legal Member notes that the tenancy deposit was not secured in an approved scheme for the whole term of the tenancy, although allowance has to be made for it having been returned to the Applicant before the tenancy ended. The Respondent, by his own admission, is an experienced landlord who has been letting out properties for over 40 years. It is not his principal occupation, but he has eight properties on his land which are rented out. He admitted to the Legal Member that he was aware of the 2011 Regulations but chose not to comply with them, due to the additional administrative work this would entail. He also thought that he could ignore the provisions because he does not always take deposits from tenants, and always returns them when he does. Following the imposition of a penalty in an application by another tenant, he now makes sure that deposits are lodged in accordance with the Regulations. He fully accepts that he has breached the regulations although feels that it is unfair that he is being penalised again for the same breach. He also objects to the penalty being paid to the Applicant.

17. The Legal Member notes that the deposit was returned to the Applicant, at his request, before the tenancy came to an end. The Applicant has therefore not suffered any financial loss as a result of the Respondent's actions. He may have incurred costs when he moved from the property, but these are not directly related to the failure to lodge the deposit and are not relevant. The Legal Member is also satisfied that the Applicant's alleged "revenge" motive is not relevant. It is evident that a previously good relationship between the parties has soured. However, this situation and circumstances which led to it are not factors which should be considered. The 2011 Regulations impose an absolute obligation on a landlord to lodge a deposit in an approved scheme. The Respondent did not do so, and the reasons for his failure are not connected to the relationship with the Applicant or the breakdown of same.

18. The Legal Member notes that the Respondent has failed to comply with the 2011 Regulations on at least one other occasion. This resulted in an application to the Tribunal and an award being made against him. However, it is clear from the information provided at the CMD, that there may have been other occasions. His explanation for his actions is a general one, namely that the administrative issues associated with dealing with a tenancy deposit scheme were off-putting, rather than specific to the Applicant. Furthermore, the Respondent advised the Legal Member that although he often does not take deposits from tenants, he also stated that he always returns deposits to tenants. In an email to the Tribunal on 30 September 2020, the Respondent states " I did not use the official deposit scheme. Correct. I have always returned ALL deposits in the 42 years I have leased domestic property. I have admitted my mistake in not using the official deposit scheme. See 20/1563 Mrs Hartley/Dorantt. Obviously the 4 leases I have issued in 2020 follow the new legislation re deposits". The inference taken by the Legal Member is that, prior to 2020, the Respondent did not always lodge tenancy deposits in approved schemes.

19. In the Upper Tribunal decision Rollet v Mackie 2019 UT 45, Sheriff Ross comments, "(8) However, other FtT cases were not binding on the FtT, and the decision under regulation 10 is highly specific to each case. Accordingly, awards in other cases, even if the breach is described as "serious" or similar, are of limited assistance and do not establish an underlying principle. Each case has to be examined on its own facts, upon which a discretionary decision requires to be made by the FtT…Comparison with other cases is therefore of minimal assistance" and "(14) Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant; or other hypotheticals."

20. The Legal Member notes that in the present case, there is evidence of "deliberate" failure by the Respondent and of other breaches having occurred, although not "repeated breaches" or "multiple tenants". The Legal Member is satisfied that the present application warrants an award a high award, although not the maximum or "most serious" end of the scale. Having regard to all the relevant factors, the Legal Member determines that an award of two and a half times the deposit should be made, the sum of £750.

Decision

21. The Tribunal determines that an order for payment of the sum of £750 should be made in favour of 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.

Josephine Bonnar, Legal Member **23 November 2020**