Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 and Regulations 3 and 10 of the Tenancy Deposit Schemes (Scotland0 Regulations 2011

Chamber Ref: FTS/HPC/PR/19/2111

Re: Property at An Teallach, 35 Pulpit Drive, Oban, Argyll, PA34 4LE ("the Property")

Parties:

Mrs Kerrielynn McLuckie, 3 Rhuvaal Road, Oban, Argyll, PA34 4BT ("the Applicant")

Mr Ruari Armstrong, Cherry Tree Cottage, Glencruitan, Oban, PA34 4QA ("the Respondent")

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Application should be determined without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £1,200.

Background

By application, received by the Tribunal on 8 July 2019, the Applicant sought an Order for Payment in respect of the failure by the Respondent to lodge a tenancy deposit in an approved tenancy deposit scheme, as required by the Tenancy Deposit Schemes (Scotland) Regulations 2011 made under Sections 121 and 191 of the Housing (Scotland) Act 2006.

The application was accompanied by a copy of a Tenancy Agreement purporting to run from 6 September 2018 to 31 May 2019. A deposit of £920 was payable under the Agreement. Clause 14 of the Agreement stated that it was a short assured tenancy. The Applicant also provided a copy of a letter from the Respondent confirming he had given Notice to Quit requiring the Applicant to vacate the Property by 25 May 2019 and that the Applicant had been a very respectable tenant for whom

he would be happy to provide a letter of reference. The Applicant also provided copies of a purported Notice to Quit to take effect on 6 March 2019 and a letter from the Respondent dated 13 May 2019 stating that the Respondent had been given a Notice to Quit by 10 June 2019, due to the Property being placed on the market. It repeated the statement that she had been a very respectable tenant.

In her application, the Respondent stated that the Respondent had provided an illegal lease. In order to obtain housing as a homeless person she had had to obtain a Notice to Quit. This had taken three attempts before the Respondent got it right. The deposit had not been returned and the Respondent had attempted to charge the Applicant for lost Airbnb bookings as well as rent and was now charging for unnecessary charges in an attempt to refuse return of the deposit. The Applicant accepted that 4 days' rent was due, as well as the cheapest of three quotes for repairing the bedroom wall and for the grass cutting, but she did not agree to pay for fair wear and tear or inflated cleaning costs as the Property had been well looked after and the Respondent had agreed this on numerous occasions and had offered to provide references. He had not provided any quotes for the repair to the wall.

On 17 July 2019, the Applicant provided the Tribunal with a copy of a letter from the Respondent's solicitors in which they expressed their understanding that it was made clear to the Applicant when the tenancy commenced that the Applicant would vacate on 31 May 2019 as the Respondent had bookings for the Property after that date and that the Applicant had been happy to agree to it. By delaying vacating until 10 June 2019, a loss of bookings of £450 had resulted. The Applicant had also failed to make payment of rent for a period of 4 days (£122.40). The Respondent had pictures of the condition of the Property prior to the Applicant taking occupation and had also taken photographs of damage caused by the Applicant, namely a hole in a wall, a broken kitchen drawer, stained carpets and removal of light bulbs. The Respondent estimated the cost of putting the damage right at £150. There was also a tear in the leather sofa, requiring it to be replaced at a cost in the region of £300. The Property had been left in a dirty condition and the cost of professional cleaning was £30, together with £20 gardening costs as the garden had been left overgrown. The Respondent's loss was £1,072.40, but he was prepared as a gesture of goodwill to restrict this sum to £570.

On 1 August 2019, the Tribunal advised the parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 21 August 2019.

On 27 August, the Applicant made further written representations. These included a copy of a Facebook advert as at 27 August 2018, offering the Property for let until May 2019. She stated that the Respondent had told her that he would be responsible for the garden. On 12 November 2018, she had advised the Respondent of a change in her personal circumstances which meant that she needed a Notice to Quit to assist her in making a homelessness application. A copy of a text message to that effect was included in the representations. She had made various requests for the Notice to Quit to enable her to vacate the Property by 31 May 2019, but the Notices had been rejected as they did not meet the legal requirements to comply with the new legislation that had been brought in on 1 December 2017. On 13 May 2019, the Respondent had finally complied and the Applicant had vacated the Property at the end of the 28 day notice period, namely 10 June 2019. After that, the Respondent had contacted her about issues uncovered during the Property inspection, namely a hole in a wall, grass not being cut, loss of Airbnb bookings and 4 days' rent. She had not been prepared to recompense the Respondent in relation to Airbnb bookings, but

had accepted the other items, subject to the Respondent obtaining three quotes for the work required to repair the wall. She had then received the letter from his solicitors and disputed the charge for replacing the sofa and for cleaning the Property and the carpets.
On 28 August 2019, the Tribunal received written representations from the Respondent's solicitors, in which they stated that at the time of the commencement of the tenancy he had been advertising the Property on Facebook and on the Booking.com website. The Respondent had no knowledge of letting procedures or regulations as until then he had only let the Property on a short term holiday basis. He had obtained a copy of a lease from a friend and had amended it. He had not been aware of the requirement to lodge the deposit in an approved deposit scheme and stressed that he had been trying to help the Applicant by giving her somewhere to stay until she could find a local authority house.

Case Management Discussion
A Case Management Discussion was held at Oban Sheriff Court on the morning of 5 September 2019. The Applicant was present and the Respondent was represented by Mrs Donna Sagewood of E.Thornton & Co solicitors, Oban.
The Applicant reminded the Tribunal that, whilst the Respondent was saying he had let the Property to her and her family out of the goodness of his heart, it had been advertised on Facebook and she had gone through a rigorous application process. She had no intended staying beyond 31 May, but she had been unsuccessful in finding alternative privately rented property for her and her four children in Oban. Her personal circumstances had changed in November 2018 and that was when she had asked for a Notice to Quit. She accepted that the Respondent had tried to assist in this, but he had twice served the incorrect form.
Mrs Sagewood told the Tribunal that the Respondent did want to resolve matters, but she had no instructions to offer a sum other than that set out in the written representations, namely £570. The Respondent had been unaware of the Regulations which she accepted were quite clear. He had let the Property in the past to workers requiring accommodation during building contracts in Oban. Mrs Sagewood accepted that there was a distinction to be drawn between that arrangement and the present one, where the Property had been the Applicant's only or principal residence.

Reasons for Decision
Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations states that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it would determine the application without a Hearing.
Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations") provides that a landlord who has received a deposit in connection with a relevant tenancy must within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme and provide the tenant with certain information required under Regulation 42 of the Regulations. Regulation 10 of the Regulations states that if satisfied that the landlord did not comply with any duty in relation to Regulation 3, the Tribunal **must** order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.

The Tribunal accepted that the Respondent had not wilfully failed to comply with the requirement to lodge the deposit. He had been unaware of the legal requirement to do so. He had sought to make deductions from the deposit and even after he had become aware of his failure to comply with the Regulations, had still sought to retain £570, contending that his loss exceeded £1,000. As a result, the Applicant, who had accepted that some deductions were justified, had had to go through the process of the present application, with the attendant inconvenience, delay and worry that had caused. If the deposit had been lodged with an approved scheme, the matter would have been adjudicated there and the present application would not have been necessary. This had to be reflected in the amount that the Order would require the Respondent to pay.

The Tribunal was of the view that, whilst he had attempted to assist the Respondent in her request for a Notice to Quit, he had failed to recognise that this was not a short assured tenancy but was a Private Residential Tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016 and that the appropriate document was a Notice to Leave, not a Notice to Quit. The Respondent had been absolutely blameless in this and the failure of the Respondent had resulted in his being unable to require the Applicant to vacate the Property until 10 June 2019. This she had done and, had she left at an earlier date, the local authority might have taken the view that she had made herself intentionally homeless and refused to rehouse her and her family. Accordingly, the Tribunal would not take into account any "lost" revenue from Airbnb bookings.

It was not the remit of the Tribunal to do the job that should have been done at adjudication by a tenancy deposit scheme, so the tribunal was not going to consider the competing claims in respect of the cleaning, carpet cleaning, sofa replacement and gardening cost, but the Tribunal did note that the Applicant accepted that some of the deductions demanded by the Respondent would have been justified and that she would have accepted a repayment of £801.30. At the Case Management Discussion, she said that she contested the gardening cost, as the Respondent had said at the outset that he would deal with garden maintenance, but she accepted that this was a very small sum of money, namely £20.

Having considered all the evidence before it, the Tribunal came to the view that the amount that the Respondent should be ordered to pay to the Applicant should be £1,200. In arriving at this figure, the Tribunal took into account the fact that, whilst he had not acted wilfully, the Respondent could not use ignorance of the law as an excuse and that, although the Respondent would have accepted some deductions from the deposit, the Respondent's failure to lodge it with an approved scheme had meant that she had been denied access to her money for a number of months and had had to fight for its return without the protection that the legislation would otherwise have afforded her, namely that the money should not be under the direct control of the Respondent, with the imbalance of power between the Parties that the Regulations were designed to prevent.

Decision

The Tribunal determined that the Application should be determined without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £1,200.

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.

George Clark

Legal Member/Chair

5 September 2019

Date