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

Chamber Ref: FTS/HPC/PR/18/3251

Re: Property at 13 Whitehall Crescent, Carluke, ML8 5DU ("the Property")

Parties:

Miss Laura Reed, Eastgate, Carmichael, Biggar, ML12 6PL ("the Applicant")

Mr Steven Noon, 32 Douglas Street, Carluke, ML8 5BJ ("the Respondent")

Tribunal Members:

Fiona Watson (Legal Member) and James Battye (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") granted an order against the Respondent for payment in the sum of SIX HUNDRED POUNDS (£600) STERLING

An application was made under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules"). Said application sought payment against the Respondent for payment in respect of the Respondent's failure to lodge a tenancy deposit with an approved tenancy deposit scheme.

A Case Management Discussion ("CMD") took place on 29 January 2019 where the Applicant was personally present. The Respondent was unable to appear due to adverse weather conditions. The Respondent had submitted a written response to the Applicant's application prior to said CMD. On that basis, the Tribunal was satisfied that there was sufficient information in front of it to determine the facts in dispute, and a Hearing was fixed on the matter.

The Hearing took place on 18 April 2019. Both parties were personally present.

The Applicant moved for her application to be granted. She submitted that she rented a property from the Respondent for a period of two months. After she had

viewed the property she was told that she would be required to pay a deposit of £200 as the landlord had previous issues with tenants stealing white goods and this money was to secure those white goods. She was told it would be returned in full if she left the white goods at the end of her tenancy. The Applicant paid the sum of £200 to the landlord. She asked for a receipt and received an email of 17 August 2018 from the landlord which stated "payment received for 200 deposit thanks." A copy of this email was lodged alongside the application.

There was no mention in the lease regarding payment of a deposit. She queried this with the landlord and he advised that he didn't need to mention it as it only covered white goods. Upon moving into the property there was a fridge and oven. The Respondent then bought the Applicant a washing machine when asked to do so. These were all left in the property at the end of the tenancy.

Upon vacating the property, she asked for the deposit to be returned. The Landlord replied by remarking that he would have to paint the walls as they were marked. The Applicant called the landlord who accused her of causing damage to the property. There was no inventory prepared for the property ether at the start or end of the tenancy. The Applicant again asked the landlord to return her deposit and he stated that she should give him a period of a week to consider matters and he'd revert back to her. She thereafter sought advice from CAB as regards her legal positon, due to his failure to return the £200 to her.

The Respondent denied the Applicant's claims. Mr Noon advised that he owns a large number of properties which he rents out and that he never takes a security deposit. He takes a holding deposit, which is then deducted from the first month's rent. Mr Noon submitted that the £200 paid by the Applicant was initially taken as a holding deposit, which would be deducted from the first month's rent. However, quickly thereafter he had a telephone conversation with the Applicant where he suggested that the previous tenant was looking to sell the white goods he had purchased for the property and would she like to purchase them from him? Mr Noon stated that the Applicant had agreed this, and accordingly Mr Noon had effectively acted as a go-between, arranging for transfer of the £200 paid to him by the Applicant, to be paid over to the previous tenant for purchase of the appliances. No evidence of such a payment being made by the Respondent to the previous tenant was produced nor referred to. At the termination of the tenancy Mr Noon had to remove the appliances from the property and leave them outside as the Applicant had failed to take them with her and the new tenant didn't want them.

Upon being pressed by the Tribunal as to exactly how the conversation regarding purchase of the appliances had taken place, what had been agreed and how, Mr Noon said he couldn't remember exactly what had taken place but that it would have been agreed in a telephone conversation with the Applicant. Mr Noon advised that he records all of his telephone calls but unfortunately his telephone had broken so he was unable to produce this as evidence of what had been discussed.

Mr Noon was asked to explain why his email of 17 August 2018 (which had been lodged alongside the application) referred to "payment received for 200 deposit" with no reference to ether it being a holding deposit, or payment for purchase of goods.

He explained that he is dyslexic and that his intention here was that it was a holding deposit to be deducted from the first month's rent.

The Applicant denied that a telephone call had ever taken place between her and the Respondent as regards agreement to purchase the appliances. She had never had any contact with the previous tenant regarding same either.

The Tribunal adjourned to consider the submissions made by the parties. The Tribunal considered the following factors in coming to their decision:

- The Tribunal was satisfied that payment had been made prior to commencement of the lease by the Applicant to the Respondent of £200. This was not disputed.
- There was no written documentation which referred to the deposit as being a "holding deposit"
- The Tenancy agreement contained a Clause which referred to a deposit however the amount was stated as being £0. There was no mention of a "holding deposit" being taken, to be deducted from rent. The Rent clause referred to a monthly rent of £365.
- Documentation had been lodged in which the landlord had used the phrases "purchase of appliances deposit" and "payment received for 200 deposit"

The position put forward by the Respondent was that the payment made of £200 started off as a "holding deposit" and quickly thereafter turned into a payment for purchase of white goods. This was after a telephone conversation took place with the Applicant in which this was agreed between the parties. There was no written agreement produced in this regard. The Applicant denied this agreement had ever been reached, nor that any such discussion had taken place. When pressed by the Tribunal as to the terms of the agreement reached and how it had been reached the Respondent was unable to give any particular detail and at points was vague in his response. The Tribunal preferred the evidence of the Applicant in this regard.

The Tribunal was accordingly satisfied that a security deposit of £200 had been paid by the Applicant to the Respondent, and which fell within the definition of a deposit under section 120(1) of the Housing (Scotland) Act 2006. On that basis, the said deposit should have been placed in an approved tenancy deposit scheme in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. This wasn't done. Accordingly, the Respondent was in breach of Regulation 3 as aforesaid and the Tribunal must make an Order in terms of Regulation 10 of the said 2011 Regulations.

In terms of said Regulation 10, if the Tribunal is satisfied that the landlord has not complied with Regulation 3, it must order the landlord to pay the tenant an amount not exceeding three times the amount of the deposit. The Tribunal considered that it was appropriate under the circumstances to grant an order in the maximum sum, being £600.

- Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment in the sum of SIX HUNDRED POUNDS (£600) STERLING

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.

F Watson

Legal Member/Chair **Date** 18/9/19