Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/18/2440

Re: Property at 4 Laurel Gait, Cambuslang, Glasgow, G72 7BE ("the Property")

Parties:

Mrs Hauwa Ahmadu, 14 Ardrain Avenue, Motherwell, ML1 2JR ("the Applicant")

Mr Ilian Ivanov, sometime residing at 4 Laurel Gait, Cambuslang and whose present whereabouts unknown ("the Respondent")

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the 2017 Rules") seeking an order for payment of the deposit in relation to a tenancy for the Property.

2. The application contained,

   (a) a copy of the Tenancy Agreement

3. A case management discussion had taken place on 30 April 2019. The Applicant had attended with her solicitor, Ms Rona Macleod. The Respondent had not attended as his current whereabouts were unknown. Reference is made to the terms of the case management discussion note. The case was continued to a

further case management discussion for a number of reasons including, for supporting documents be lodged in relation of the Applicant's application, and so that service by advertisement and email upon the Respondent could take place.

4. The Applicant lodged a written submission, together with productions and authorities prior today's case management discussion. Reference is made to those further documents.

5. I was satisfied that service by advertisement had taken place and I also noted that there had been an email sent to the Respondent's known email address. There had not been any response to either of these methods of service. I was prepared to proceed with today's hearing in the absence of the Respondent.

6. The Applicant was not in attendance today, but was represented by Ms Macleod.

The Case Management Discussion

7. The Applicant's agent advised that she was seeking an order for three times the deposit given that there existed a tenancy agreement; a deposit had been paid; the deposit had not been paid into any approved scheme; and there was no mitigation in relation to the acting of the Respondent. The Applicant had also not been provided with all the prescribed information.

8. The Applicant's agent submitted that a tenancy had existed between the parties, the tenancy agreement had been sent by email to the Applicant from the Respondent. The Applicant and her partner had signed it and emailed it back to the Respondent, on 21 of June 2018. The Applicant had paid the rent and deposit on the 21 of June 2018. The Applicant had collected keys for the property and she had started moving her things into the property. The Respondent had given her access to the Property. The Applicant's tenancy agreement stated that the terms commenced on 21 June 2018. Therefore she submitted that a tenancy had been constituted between the parties.

9. It was noted that there was no reference in the tenancy agreement as to what the deposit could be used for.

10. She submitted that the tenancy had not terminated by mutual agreement, her client had returned to the property later in the day on the 22 June 2018, and found that the locks had been changed and her belongings had been moved outside. She advised that the Respondent had then offered to repay her deposit, however had advised that he would deduct £250 for costs. The Applicant did not consider that this was reasonable. She submitted that it was not reasonable to withhold money for matters which were undertaken prior to the commencement of the tenancy. Further, the deposit should had been put into an approved scheme and then the Applicant would have had an impartial service in which to have the dispute determined.

11. She submitted that there had only been one offer from the Respondent to the Applicant to repay the deposit. Then there had been no further discussion as the

Applicant had been advised by the CAB if she accepted the sum under deduction of the £250 she would have been accepting that the deduction was fair and the Applicant did not accept that this was fair or reasonable. There appears to have been no effort by the Respondent to repay this money.

12. She submitted that after her firm had become involved the Respondent had paid the rent and deposit back to the Applicant, but this was only after they had advised that they had made an application to the tribunal in January 2019.

13. She submitted that an order for the maximum award should be granted in this case. In support of her submission she advised that they had limited information as to whether or not the Respondent rented out a lot of properties or was an experienced landlord, however it appeared that he may still be renting out the property, as she noted that the tribunal had attempted to serve papers on him at that address but he had not been there, and the person who had answered the door appeared to have been a tenant. She was noted that he also does not appear to be a registered landlord any longer.

14. She also submitted that the lease agreement makes reference to putting the deposit into scheme and therefore the Respondent must have been aware of his obligations.

15. She submitted that whilst it is noted, but not accepted, that the Respondent stated that the tenancy was ended by mutual agreement, that does not mean that he is entitled to avoid paying the deposit into a scheme. The regulations state that the deposit has to be paid within 30 days of the commencement of the tenancy.

16. She advised that there was no further contact from the Respondent to repay the deposit after the correspondence with the CAB, she submitted that her firm contacted him on 11 September 2018 regarding the refund of the deposit, but it was not until January 2019 when they advised him that proceedings had been raised that he paid it back to the Applicant.

17. In addition the more general wider conduct of the Respondent was inappropriate as a landlord, for example in relation to the changing of the locks.

18. She submitted that there was no mitigation as far as she could see, and certainly he had not submitted any mitigation, the Respondent was aware of these proceedings, he had not provided any explanation to the tribunal and had made no contact whatsoever with the tribunal regarding this case. Having regard to all of the circumstances including the absence of any mitigation it was appropriate to award three times the deposit sum and she submitted that the authorities she had lodged supported her position

Findings in Fact

19. On the information before the Tribunal I found the following facts to be established:

20. A tenancy agreement was entered into between the Applicant and the Respondent for the property and existed between the parties. It commenced on 21 June 2018.

21. The Respondent changed the locks to the Property on 22 June 2018.

22. The application to the tribunal had been made on 18 September 2019.

23. The tenancy agreement confirms that £1500 is payable as a deposit.

24. The tenancy agreement states that the deposit will be held under the terms of the Deposit Protection Service.

25. The Applicant paid the deposit to the Respondent.

26. On around 8 February 2019 the Respondent repaid the deposit to the Applicant.

27. That the deposit had not been paid into an approved scheme.

Reasons for Decision

28. The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits by Respondents for Applicants, and relevant to this case are the following regulations:-

Duties in relation to tenancy deposits

3.—(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— pay the deposit to the scheme administrator of an approved scheme; and
Provide the tenant with the information required under regulation 42.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A "relevant tenancy" for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement— (a) in respect of which the landlord is a relevant person; and (b) by virtue of which a house is occupied by an unconnected person, unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions "relevant person" and "unconnected person" have the meanings conferred by section 83(8) of the 2004 Act.

Court orders

9.—(1) A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff— must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to— (i) pay the tenancy deposit to an approved scheme; or (ii) provide the tenant with the information required under regulation 42.

29. It appears to me that the deposit had not been placed into an approved scheme within 30 working days. It also appears to me that all of the prescribed information had not been provided to the Applicant. Therefore the terms of regulation 10 apply and I must make an order not exceeding three times the amount of the tenancy deposit.

30. In considering the penalty to impose I have had regard to the fact that the Respondent did appear to be aware of his statutory duties imposed by the regulations given that there is reference to "tenancy deposit protection" in the lease agreement and therefore, I do not consider that he could submit that he was unaware of what he was required to do with the tenancy deposit.

31. The deposit was for roughly one and half times the value of a month's rent and was therefore for quite a considerable sum.

32. This case was rather unusual in that the tenant appears to have had the use of the property for no more than 24 hours, before the locks were changed and her belongings were removed from it, apparently without her knowledge or consent, leaving her, her partner and daughter without a home. From the correspondence lodged by the Applicant this would appear to relate to the fact that the Applicant had raised issues about the condition the property when she took entry. She supplied photo evidence to support her position and it does appear that there were some issues with the condition of the property.

33. There is correspondence lodged from the CAB to the Respondent shortly after the 22 June 2018, attempting to the resolve the matter and allow the Applicant and her family back into the property but this appears to have been refused by the Respondent.

34. There was correspondence lodged where the Respondent does appear to offer to repay the rent and part of the deposit; however as he was deducting £250, the Applicant had been advised to not accept that offer, in case it later precluded her from seeking the £250. After that there appears to have been no contact from either party until the Applicant's solicitors wrote to the Respondent in September.

35. It appears to me that the Respondent did not make any real effort to repay the deposit or the rent on or after 22 June; and including after 25 June when the CAB were involved; after receiving correspondence from the Applicant's solicitors in September 2018; and it was not until February 2019 and only once it had been confirmed that proceedings had been raised did he repay deposit and rent to the Applicant.

36. I believe it is likely that he will be aware of these proceedings. He has not made contact with the tribunal service to provide any information as to his position.

37. I do not consider that 3 times the maximum award should be seen as automatic, just because there is no known mitigation; I consider that all facts need to be looked at to decide what is the most appropriate sanction in each and every case.

38. I do consider however that the conduct of the Respondent as a landlord in general is extremely concerning, as it appears that he entered into a lease, and then abruptly changed his mind, changed the locks and refused to allow the Applicant and her family into the property. It appears he has paid scant regard to the law. I consider that on 22 June 2018, if the Respondent had believed that the lease had been mutually brought to an end, and (I make no comment on whether it was) then at the very least, he should have ensured that the deposit and first month's rent was repaid to the Applicant in full by return. He did not do this. I consider that to then advise that he was deducting £250 for costs incurred for works carried out before the contract was entered into, and which are not matters specified in the lease, left the Applicant in a very difficult position, and one where had the deposit been in a scheme, she would have had the chance to have the matter determined by independent arbitration. She was not given this chance due to the failure to lodge the deposit. Thereafter, there appears to have been no effort by the Respondent to either return the deposit or to ensure it was legally protected, until he became aware that legal proceedings had been raised against him. This also meant that the Applicant was prejudiced in how she was able to recover her deposit. From June 2018 until February 2019 her deposit was not protected within an approved scheme.

39. I consider that the documents lodged by the Applicant support these facts.

40. Taking all matters into account and having regard to the terms of the application, the written submissions by the Applicant, and the verbal submissions of the Applicant's agent today, I consider there had been a total disregard for the provisions of the regulations by the Respondent. Acting as a landlord brings statutory duties and responsibilities, landlords are required to ensure that these are properly discharged. In this case the Respondent failed to ensure that those duties were properly discharged.

41. As set out above Regulation 10 provides that if I am satisfied that the Respondent did not comply with any duty in regulation 3, then I must order the Respondent to pay the Applicant an amount not exceeding three times the amount of the tenancy deposit.

42. On the basis of the evidence submitted, I consider that I should make an order that the Respondent to pay the Applicant £4500 which is 3 times the tenancy deposit.

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.

Ms Melanie Barbour

13.6.16

Legal Member/Chair **Date**