Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103, Application for an Order for Payment where Landlord has not paid the Deposit into an Approved Scheme

Chamber Ref: FTS/HPC/PR/18/0085

Re: Property at 38 York Way, Renfrew, PA4 0NL ("the Property")

Parties:

Mr Ryan Higgins, Mrs Higgins, 23 Kirkfield Gardens, Renfrew, PA4 8JA ("the Applicant")

Ms Norma Beacom, 51 Locher Crescent, Houston, Johnstone, PA6 7NW ("the Respondent")

Tribunal Members:

Shirley Evans (Legal Member)
Leslie Forrest (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent failed to comply with her duty as a Landlord in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011("the 2011 Regulations") as amended by The Housing (Scotland) Act 2014 (Consequential Provisions) Order 2017 by failing to pay the Applicants' Tenancy Deposit to the scheme administrator of an Approved Tenancy Deposit Scheme, grants an Order against the Respondent for payment to the Applicants of the sum of One Thousand Pounds (£1,000) Sterling.

BACKGROUND

1. The Case Management Discussion in this case was held on 8 March 2018. A number of facts were agreed between the Parties, all as detailed in the Summary of the Case Management Discussion and issued by the Tribunal following thereon.

2. At the Case Management Discussion, the Tribunal determined that a Hearing in terms of Rule 24 of the First Tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 ("the 2017 Regulation") should be assigned.

3. The Tribunal also made directions under Rule 16 of the 2017 Regulations requiring the Parties to lodge tenancy agreements from 2011 and 2013, lists of documents and lists of witnesses at least 14 days before the Hearing.

The Hearing

4. The Hearing took place on 18 April 2018. Both Applicants were in attendance. The Respondent was also in attendance.

5. The Tribunal established that both Parties had copies of all relevant documentation. The Applicants confirmed they had received a copy of an email sent to the Tribunal by the Respondent on 12 April 2018. The Applicants stated that they had received this the day before the Hearing. Nevertheless, the Applicants advised that they felt they could proceed with the full Hearing.

6. The Tribunal confirmed that the purpose of the Hearing was to consider what sanction should be made against the Respondent after hearing parties submissions; it was not the purpose of the Tribunal to act as arbiter in relation to the conduct of parties during the period of the tenancy.

7. The Tribunal dealt with a two preliminary matters before proceeding. Firstly, the Tribunal considered the clarification of points raised by the Respondent to the Tribunal's Summary of the Case Management Discussion which had taken place on 8 March 2018 as follows: -

8. -Paragraph 9h: The Applicants accepted the Respondent's position that they had in fact been provided with a copy of the Short Assured Tenancy signed in April 2013.

9. -Paragraph 9j: The Tribunal sought clarification from the Respondent about what took place on 6 October 2017. Both parties accepted that there was no formal inventory check at the end of the Tenancy on the 6th October 2017.

10. The second preliminary matter before the Tribunal was the email sent by the Respondent to the Tribunal on 12 April 2018 in which she contested the date that the Short Assured Tenancy had been brought to an end, thereby challenging the competency of the Application before the Tribunal.

11. The Respondent confirmed her email contesting the termination date was based on advice from a friend who had stated that the tenancy ended when the Applicants moved out of the property which she believed to be on or around 22 September 2017. Other than repeating that, she made no submissions to the Tribunal to persuade the Tribunal that the Tenancy had indeed ended on 22 September 2017. There was no dispute that the

Applicants had started to remove to a new property at about that time. There was no dispute that the keys were returned to the Respondent on 6 October 2017 and that rent had been paid up to 8 October 2017. The Tribunal was accordingly satisfied that the Short Assured Tenancy entered into by parties on 5 June 2017 was terminated by mutual consent between the parties on 6 October 2017.

12. In any event, the Tribunal noted that the Respondent had not amended her written representations in terms of Rule 13 of the 2017 Regulations. That being the case, the Tribunal explained to the Respondent that they had no power to consider any amendment at such a late stage. In any event, even if the Tribunal had such power, the points raised by the Respondent did not alter the fact that parties had terminated the Short Assured Tenancy by mutual consent on 6 October 2017, thereby rendering the Application to have been lodged timeously in terms of Regulation 9(a) of the 2011 Regulations.

Findings in Fact

13. There was no dispute as to the factual circumstances relating to the deposit. Reference is made to the Findings in Fact in Paragraph 9 of the Summary of the Case Management Discussion except as follows.

14. The keys were returned to the Respondent on 6 October 2017. Rent had been paid up to 8 October 2017.

15. The Short Assured Tenancy entered into by parties on 5 June 2017 was terminated by mutual consent between the parties on 6 October 2017.

Submissions

16. The Tribunal heard submissions from both parties. The Respondent explained to the Tribunal that whilst the Tenancy Agreement dated 5 June 2017 at Clause 6 specifically referred to the Tenancy Deposit Schemes, she did not read the document before completing and signing it. The Respondent could not recall at what point she became aware that she was required to comply with the 2011 Regulations. She explained to the Tribunal that whilst she was a Registered Landlord with Renfrewshire Council, she had not been able to attend any of their training courses. She had complied with other legislative requirements with regard to Gas Safety, EICR report and Carbon Monoxide alarms.

17. The Respondent confirmed that she has a second rental property which is fully managed by a Letting Agent. The Tribunal made enquiries of the Respondent as to whether the Tenancy Deposit in that property was protected under the 2011 Regulations. The Respondent could not confirm that this was the case as she was relying on the actions of a Letting Agent. The Tribunal pointed out to the Respondent that responsibility to comply with the 2011 Regulations was hers and not that of the Letting Agent.

18. The Tribunal also considered the points raised by the Respondent in her email to the Tribunal of 3 April 2018 as to why she was a "fair landlord". The Tribunal explained to the Respondent that the points made in relation to the increase of rent, change of due date and the alleged lack of permission for the Tenants to keep a dog were not relevant in terms of this application. The Respondent would have had other legal remedies open to her to deal with these matters had she chosen to do so during the Tenancy.

19. The Tribunal considered the other four points made by the Respondent in mitigation in relation to:
-Amount of deposit withheld
-The garden
-The speed of return of the remainder of the Deposit
-That parties had agreed to terminate the Tenancy by mutual consent.
There was no dispute that the Respondent had retained £50 and had returned the remaining £550 of the £600 deposit plus an additional £30 for a washing machine to the Applicants within 3 days.

20. The condition of the garden at the end of the tenancy was a matter of disagreement between parties.

21. The Applicants in response submitted to the Tribunal that their right to contest the Respondent's withholding of part of their deposit in relation to the garden had been denied them. They did not feel comfortable in approaching the Respondent about the amount withheld by her in respect of the garden. They understood that the Tribunal had the power to award a sanction of three times the amount of the tenancy deposit.

Reasons for Decision

22. The amount to be paid to the Applicants is not said to refer to any loss suffered by the Applicant. Accordingly, any amount awarded by the Tribunal in such an application cannot be said to be compensatory. The Tribunal in assessing the sanction level has to impose a fair, proportionate and just sanction in the circumstances, always having regard to the purpose of the 2011 Regulations and the gravity of the breach. The Regulations do not distinguish between a professional and non-professional Landlord such as the Respondent. The obligation is absolute on the Landlord to pay the deposit into an Approved Scheme.

23. In assessing the amount awarded, the Tribunal has discretion to make an award of up to three times the amount of the deposit, in terms of Regulation 10 of the 2011 Regulations. The Tribunal considered that the Respondent's failure was not wilful. However the Tribunal considered that the Respondent was only too willing to abdicate responsibility for her failure in respect of the rights of her tenants to have a properly protected deposit. The Tribunal noted that the Respondent had correctly admitted her breach of the Regulations in

this regard. The Tribunal also noted that the Respondent had paid the deposit into a separate bank account. Nevertheless, the Tribunal considered that the length of time that the failure to comply with the 2011Regulations being a period of over four and a half years and two tenancy agreements was a significant breach.

Decision

24. In all the circumstances, the Tribunal was not inclined to order the maximum amount of three times the Tenancy Deposit.

25. The Tribunal considered that a fair, proportionate and just amount to be paid to the Applicants was One Thousand Pounds (£1,000) Sterling and accordingly made an Order for Payment by the Respondent to the Applicants.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

SHIRLEY EVANS

Legal Member/Chair

18 April 2018.

Date