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/22/3867

Re: Property at 3F3 30 Albion Road, Edinburgh, EH7 5QW ("the Property")

Parties:

Miss Alexandra Bailie, 114/8 Lauriston Place, Edinburgh, EH3 9HX ("the Applicant")

Mr Ian Jacobs, Ms Sally Jacobs, 19 Parkvale Place, Edinburgh, EH6 8AS ("the Respondents")

Tribunal Members:

Alastair Houston (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment of £725.00 be made in favour of the Applicant.

1. **Background**

    1.1 This is an application under Rule 103 of the Chamber Rules whereby the Applicant seeks an order for payment in respect of an alleged failure on the part of the Respondents to comply with their duties under the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations").

    1.2 The application was accompanied by copies of the written tenancy agreement between the parties, email correspondence between the Applicant and the Respondent's letting agents, Factotum, and email correspondence between the Applicant and the approved deposit schemes.

    1.3 No written material had been lodged by the Respondents in advance of the Case Management Discussion.

2. The Case Management Discussion

2.1 The Case Management Discussion took place on 7 February 2023 by teleconference. The Applicant was personally present. The Respondents were also present but were represented by Ms Natasha Donellan of Factotum as letting agents for the property. Mr Chris Boisseau of Factotum was also in attendance.

2.2 The Tribunal heard firstly from the Applicant. She confirmed that the tenancy had commenced on 23 October 2020. She was the sole tenant and had paid a deposit of £725.00. This was paid to Factotum as letting agents for the property. She had been provided with an account number for Safe Deposit Scotland where she believed her deposit was subsequently held. The tenancy ended on 7 September 2022. Thereafter, she had been in communication with a Ms Becca Langenfeld of Factotum with regards to the return of the deposit. It was subsequently discovered that the deposit had not been paid to Safe Deposits Scotland and, through communication with each of the approved deposit schems, the Applicant learnt it had not been lodged with any. The full deposit had been returned to her on 30 September 2022.

2.3 Ms Donellan confirmed that the deposit paid by the Applicant had not been paid to Safe Deposit Scotland. An account had been created with them at the time the deposit was received but funds never remitted. The deposit was held in Factotum's client account for the duration of the tenancy agreement. The property manager employed by Factotum at the time the deposit was taken had subsequently left in April 2021, leaving behind note of the Safe Deposit account number. The error had therefore not been discovered until the tenancy had ended. Factotum were not operating at full capacity throughout the pandemic. They manage between 300 and 350 properties and use Safe Deposits Scotland as a matter of course for the holding of deposits.

2.4 The Applicant confirmed that she took no issue with the factual explanation that had been given by the Respondent's representative as to the failure to lodge the deposit. In support of the Tribunal making an order for payment, she advised that she felt insulted and threatened by the Respondent's representative for highlighting the failure to lodge the deposit. Ms Donellan advised that the staff member, Ms Langenfeld, was relatively new and still within a training period. The deposit had immediately been repaid to the Applicant upon discovery of the error and a copy of the complaints procedure provided. The Tribunal considered that a hearing was not required and a decision could be made on the basis of the documents before it and parties' submissions.

3. Reasons For Decision

3.1 It was not disputed that there had been a failure on the part of the Respondents to lodge the tenancy deposit with a third party scheme. In

terms of the 2011 Regulations, it was therefore for the Tribunal to determine whether an order for payment ought to be made and, if so, what amount.

3.2 Regulation 10 of the 2011 Regulations is as follows:-

10.
If satisfied that the landlord did not comply with any duty in regulation 3 the [First-tier Tribunal] —
(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and
(b) may, as the [First-tier Tribunal] 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.

The test for the Tribunal was therefore to consider what was appropriate in the circumstances.

3.3 The Tribunal took account of all that was said during the Case Management Discussion and the material accompanying the application. The Tribunal considered that this application involved not a wilful disregarding of the 2011 Regulations but, rather, a genuine oversight on the part of the Respondents' letting agents. When the error was discovered, the full deposit was repaid to the Applicant. Unfortunately, the deposit went unprotected for the entire duration of the tenancy, being a period of almost two years and the Tribunal considered a sum equivalent to the deposit itself, being £725.00, would be appropriate.

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.

A. Houston

_____   **7 February 2023**
Legal Member/Chair   **Date**