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

Chamber Ref: FTS/HPC/PR/18/1294

Re: Property at 9/7, 72 Lancefield Quay, Glasgow, G3 8JJ ("the Property")

Parties:

Mr Jamil Hijazi, 9/7, 72 Lancefield Quay, Glasgow, G3 8JJ ("the Applicant")

Mr Arshad Mahmood, 10 Langhaul Court, Glasgow, G53 7RU ("the Respondent")

Tribunal Members:

Fiona Watson (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Applicant

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent was in breach of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") and accordingly granted an order against the Respondent for payment to the Applicant in the sum of FIVE HUNDRED POUNDS (£500) STERLING

- Background

The Applicant submitted an application under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 seeking an order for payment of three times the deposit paid to the Respondent (the deposit being £1000) on the basis that the Respondent was in breach of Regulation 3 of the 2011 Regulations by not lodging the deposit into a tenancy deposit scheme within the prescribed timescale.

- The Hearing

The Hearing took place on 12 March 2019. There was no appearance by or on behalf of the Applicant, who had advised the Tribunal administration that he did not intend to appear as he now lived abroad. The Respondent was personally present and represented by Mr Ritchie of Hardy Macphail solicitors.

Case Management Discussions had taken place on 18 September 2018, 11 October 2018, 26 November 2018 and 15 January 2019.

The Respondent had lodged written submissions on 20 November 18 setting out his position, which was namely:

- The Respondent had previously instructed a letting agent, Better Homes, to manage the property for him from commencement of the Applicant's occupation of the property in June 2013.
- The Respondent had been under the belief that Better Homes had lodged the deposit of £1000 with a tenancy deposit scheme.
- In 2016 the owner of Better Homes was sequestrated and Better Homes cased operating. The Respondent appointed a new letting agent, CLS, thereafter.
- CLS advised the Respondent that the deposit did not appear to be lodged with a tenancy deposit scheme and the respondent used his own funds to lodge the £1000 with a tenancy deposit scheme, on 6 January 2017.
- Written tenancy agreements were signed between the parties commencing 1 July 2013, 1 July 2014, 1 July 2015, 1 January 2017 and 1 July 2017.
- The Applicant was served with a Notice to Quit in July 2017. The Applicant removed from the property on 30 June 2018.
- The Respondent did not consider that the application had been lodged timeously. The lease entered into on 1 January 2017 superseded any previous lease. The previous lease had been terminated on 31 December 2016 and therefore any application required to be submitted within 3 months of 31 December 2016.

- Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant had paid a deposit of £1000 to the Respondent's agents on 26 June 2013
2. The Applicant had been in continuous occupation of the property between 1 July 2013 and 30 June 2018
3. The deposit was lodged with a tenancy deposit scheme on 6 January 2017

- Reasons for Decision

The Tribunal considered the terms of Regulation 3 of the 2011 Regulations which state as follows:

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—

(a)pay the deposit to the scheme administrator of an approved scheme; and

(b)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.

The Tribunal considered the definition of "relevant tenancy" being "any tenancy or occupancy arrangement." It was submitted by the Respondent that there had been five contractual agreements between the parties. However, there had been no change in the contractual terms of the first three and therefore that could be deemed to either be three separate "tenancies" or one continuous tenancy. Thereafter, there had been an increase in rent and a change in contractual terms and on that basis a new tenancy was entered into on 1 January 2017and again on 1 July 2017 where a further rent increase was agreed. The Respondent submitted that the application was not made timeously as it should have either been made within 3 months of the end of that initial continuous tenancy (three months after 31 December 2016) or within 3 months after the end of the first contractual agreement (3 months after 30 June 2014). No authorities were referred to in this regard.

The Tribunal took the view that there had been a "tenancy arrangement" which had been ongoing from 1 July 2013 to 30 June 2018 when the tenant vacated the property. The applicant had enjoyed uninterrupted occupation of the property throughout that period. This "tenancy arrangement" had been regulated and varied in writing between the parties from time to time during that period. Accordingly, the application had been timeously made, within 3 months of the date of his vacation from the property and termination of tenancy. It was noted by the Tribunal that the Notice to Quit served by the Respondent was irrelevant in the calculation of the termination of tenancy date. Whilst it was not clear if the Notice to Quit had indeed been validly served, even if it had been it did not serve to terminate the tenancy. It

would simply have converted the tenancy from a contractual tenancy to a statutory tenancy. The Respondent's agent agreed with this point. The Tribunal took the view that the tenancy was only terminated upon the tenant voluntary removing from the property on 30 June 2018.

The Tribunal accordingly held that the application had been lodged timeously. On that basis, it was agreed between the parties that the deposit had been paid in June 2013 and not lodged in a scheme until 6 January 2017. On that basis, the statutory timescale set out in Regulation 3 of the 2011 Regulations had not been met.

The Tribunal thereafter considered the terms of Regulation 10 in applying sanction for the Respondent's failure to lodge the deposit timeously. Regulation 10 states:

Court orders

10. *If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—*

(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 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.

The Tribunal was satisfied that the failure to lodge was not down to any intention by the landlord to deprive the tenant of the security of the deposit being lodged in a scheme. The landlord had relied on his previously appointed professional letting agents to act appropriately, and had been operating under the reasonable belief that the deposit paid had indeed been lodged with a scheme. As soon as it was brought to his attention that it had not been lodged, he used his own funds to pay £1000 into a tenancy deposit scheme. Following the tenant vacating the property, he owed rent arrears and the landlord applied to the scheme for the £1000 to be returned to him, which was done. The Tribunal was satisfied that under the circumstances, this was not a breach which required sanction at the higher end of the scale. The Tribunal accordingly granted an Order for Payment against the Respondent in the sum of £500.

- Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant in the sum of FIVE HUNDRED POUNDS (£500) 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.

Ms Fiona Watson

Legal Member/Chair

12/3/19

Date