Housing and Property Chamber
First-tier Tribunal for Scotland

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

Chamber Ref: FTS/HPC/PR/18/1958

Re: Property at 2/1 388 Great Western Road, Glasgow, G4 9HZ ("the Property")

Parties:

Mr Matthew Banjo, Mr Ivan Kwan, Mr Oluwapamimo Oladunjoye, 1/6 25E Mingarry Street, Glasgow, G20 8NS; 1/6 25E Mingarry Street, Glasgow, G20 8NS; Flat 35, 166 Bell Street, Glasgow, G4 0TG ("the Applicant")

Mrs Rukhsanna Jabbar, 11 Bernisable Gardens, Glasgow, G15 8BU ("the Respondent")

Tribunal Members:

Lesley Ward (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent as landlord for the property at 2/1 388 Great Western Road Glasgow G4 9HZ did not comply with any duty in Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and makes an order for the Respondent to pay to the Applicants the sum of two thousand five hundred and fifty pounds (£2550).

This is a case management discussion 'CMD' regarding an application in terms of Rule 103 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 "the rules" for a penalty where a landlord has not paid the deposit into an approved scheme in terms of regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, 'the regulations". The application was made by Mr Oluwapamimo Oladunjoye, Mr Matthew Banjo and Mr Ivan Kwan. Mr Oladunjoye made the application and acted as representative of all three Applicants. The Applicants attended the CMD. The Respondent also attended and was represented by Mr David Doig solicitor.

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The tribunal had before it the following copy documents:

1. Application received by the tribunal on the 31 July 2018.
2. Tenancy agreement dated 29 May 2017 between the Applicants and a further 4th tenant Mr Aaron Cheng and the Respondent.
3. Tenancy agreement dated 14 May 2016 between the Applicants, a 4th tenant Mr Aakash Sultanpet Raju and the Respondent.
4. Email from the Respondent to the Applicants dated 4 May 2016 regarding the deposit of £1700.
5. Emails from the 3 tenancy deposit companies confirming the deposit was not lodged.
6. Document called 'invoices" dated 28 July 2018 regarding the property.
7. Document (undated) headed "Landlord: Repair work done / damages.
8. Email from Respondent to Applicant dated 29 July 2018.
9. Letter from Respondent to Applicants dated 22 May 2018.
10. Schedule of Documents for the Respondent.
11. Written representations on behalf of the Respondent .

Case management discussion

Mr Diog raised two preliminary matters with the tribunal, both of which were set out in his written submissions.

Firstly, he stated that the application may be time barred as the deposit of £1700 paid by the three Applicants (and a 4th tenant who does not form part of this application or indeed the most recent lease). His hypothesis was that the first lease with the 4th tenant came to an end in July 2017 and accordingly the application in respect of that deposit should have been made within 3 months of July 2017. He conceded that the deposit paid in July 2016 was not returned to the Applicants and a new lease was signed . Mr Oluwapamimo stated that a new 4th tenant was brought in to replace the outgoing tenant and the Respondent left them to make the adjustment required ie the incoming tenant reimbursed the outgoing tenant his share of the deposit. The tribunal did not find this an attractive argument by Mr Doig and rejected it. The tribunal took the view that the failure to lodge the deposit could arguably have arisen both at the time the deposit was first paid and the first lease signed and then at the point that the second lease was signed. It appeared to the tribunal that the deposit was not returned at the point the first lease expired for administrative ease and it would be unjust to penalise the Applicants for that.

The second point was that we have two leases, both leases were signed by 4 tenants. The first lease was signed by a 4th tenant who left after the first lease expired and a 4th new tenant came in with the 3 original remaining tenants. Mr Doig suggested in his written and oral submissions that

It is noted that these proceedings are brought at the instance of the applicant with the authority tenant Kwan (otherwise Fung) and tenant Bango. It is declared that tenant Cheng has withdrawn from the process. The preliminary hearing will therefore

be invited to consider the Applicant's title and interest, having regard to the fact that the deposit was paid in terms of the First lease and the applicant in brought by three from four of the tenants under the second lease.

The tribunal considered this submission and after looking at the definition of 'tenant'' was satisfied that the Applicants have right title and interest to make the application. The interpretation section of the regulations referred to ''tenant'' as including joint tenants and former tenants by whom a deposit was paid. The term is clearly broad and by no means exhaustive.

Having disposed of the preliminary matters, the tribunal proceeded with the CMD regarding the severity of the breach. The tribunal noted that there is an outstanding matter between the parties relating to the return of the deposit. No order is sought or can be made by the tribunal today regarding the deposit but the dispute between the parties is relevant in establishing the severity of the breach.

Mr Doig very helpfully set out his client's position and explained that it was conceded that the deposit was not lodged in an appropriate scheme due to an oversight on his client's behalf. The tribunal then proceeded to hear submissions from both the Respondent's solicitor, the Respondent herself and the three Applicants in relation to the severity of the breach and any mitigating or exacerbating factors.

The Respondent's position

The Respondent explained that she has two daughters, both of whom were getting married around the time the leases were being signed and she was distracted. Because of her being preoccupied she failed to put the deposit into a scheme at the time the original lease was signed and when it was renewed. She is not a professional landlord and this is her only property. It is her former family home and after a bad experience with a rogue letting agent she decided to manage it herself. She is aware of the requirement to lodge the deposit and has done this for previous and subsequent tenants. It is the Respondent's positon that she reached an agreement with the Applicants to deduct £1097from the deposit. Mr Diog refereed to his inventory of productions in this regard. There is a screen shot of a text message which refers to £200 being paid to the Applicants. The Respondent stated that this £200 increased the amount returned from £403 to £603 and that this was done by agreement.The Respondent's position is that she was a good landlord and she had a good relationship with the tenants. She was very accommodating and would overlook late rental payment. She let Mr Oladunjoye stay on for a few days after the lease expired and she smoothed over complaints made by neighbours regarding noise and parties.

Mr Diog also referred to and email from the Applicant Mr Oladunjoye to the Respondent which states at the end

Once again thank you for having us for the past two years. It has been a great pleasure and I hope you and your family have a wonderful year and a wonderful wedding.

Mr Doig characterised the Applicants in his written submissions as "opportunistic" and he submitted that there has been no loss to the Applicants as a result of the oversight on the part of the Respondent. His written submissions referred to "invoices" and the email correspondence from the Respondent to the Applicants which the Applicants lodged referred to invoices but the tribunal did not have sight of any actual invoices.

The Applicant's position

The Applicant's position is that the deductions from the deposit made by the Respondent were made by her unilaterally and not after agreement. Mr Oladunjoye produced further screenshots of text messages following on from those which formed part of the Respondent's inventory which appeared to bear this out. He stated that he and his fellow tenants were greatly inconvenienced by the Respondent's failure to lodge and thereafter return the deposit. They were unable to avail themselves of the dispute mechanism which forms part of the tenant deposit scheme. They were unable to use the deposit money to pay for their new tenancies and, contrary to what Mr Doig had stated in his written submissions, they had suffered financial loss.They asked for invoices regarding the amounts the Respondent was proposing to deduct and none were provided. Again the text messages seemed to bear this out. He accepted that the email sent by him on 6 July 2018 was friendly and pleasant and he stated that this is always his style and in no way changes the reality of the situation.

All parties were content for a decision to be made today after a full and frank CMD.

Findings in fact

1. The tribunal is satisfied that the Applicants and a 4th tenant paid a deposit of £1700 to the Respondent around July 2017 and this deposit was carried forward when the second lease was signed on 29 May 2018.
2. The tribunal is satisfied that the deposit was never lodged in an approved scheme and the notifications laid down in regulation 42 were not carried out.
3. The tribunal is satisfied that the Respondent failed to comply with any of the duties in regulation 3.

Reasons

The tribunal is satisfied that a clear breach of regulation 3 has occurred and that an order in penalty is appropriate in terms of regulation 10. The tribunal has sufficient information before it to make a decision.

The tribunal considered the gravity of the breach. The issues which arose at the end of this tenancy could have been avoided for all parties if the Respondent had complied with her obligations and lodged the deposit. Any issues the Respondent had regarding the condition of the property this could have been dealt with by the dispute resolution system operated by the tenancy deposit schemes if the Respondent had complied with her obligations to lodge the deposit. The tribunal reviewed all of the recent cases regarding tenancy deposit schemes. The tribunal is mindful of the need to proceed in a manner that is fair proportionate and just having regard to the seriousness of the breach (Sheriff Principal Stephen in Tenzen-v-Russell 2014 GWD 4-90 and Sheiff Jamison in Kirk-v-Singh 2015 SLT (sh ct) 111). This may not have been a wilful breach and the Respondent is clearly not a professional landlord. On the other hand the Applicants have been prejudiced by the failure and the Respondent has been negotiating the return of the deposit from a position of strength that the regulations were designed to avoid. The tribunal noted that the maximum penalty of three times the deposit is £5100 and decided that the sum of one half of the maximum, namely £2550 is fair proportionate and just in all of the circumstances.

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.

LESLEY WARD

6 November 2018

Lesley A Ward Legal Member **Date**