**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 120-122 of the Housing (Scotland) Act 2006 and Section 16 of the Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/PR/18/2743**

**Re: Property at 4 Thornwood Road, Glasgow, G11 7RB ("the Property")**

**Parties:**

**Miss Eva Maria Leal Munoz, 12 Dalmarnock Drive, Glasgow, G40 4LN ("the Applicant")**

**Mr John Cowie, 38 Thorn Drive, Bearsden, Glasgow, G61 4LU ("the Respondent")**

**Tribunal Members:**

**George Clark (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent had failed to comply with the requirement set out in Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 to lodge a deposit with an approved tenancy deposit scheme, and ordered that the Respondent pay to the Applicant the sum of £550 in respect of that failure.**

**Background**

By application, received by the Tribunal on 17 October 2018, the Applicant requested an Order that the Respondent had failed in his duty to lodge with an approved tenancy deposit scheme, the sum of £550 that she had paid as a deposit in connection with a lease of the Property. She had moved in on 16 September 2018 and, on 23 September, she had given the Respondent one month's notice of her intention to leave, as she was unhappy with two of the terms of the proposed written lease, which had been submitted to her some days after she moved in.

The application was accompanied by an unsigned copy of a lease between the Respondent, as landlord, and the Applicant and a co-tenant, as tenants, text messages between the Parties covering the period from 12-24 September 2018 and the Applicant's bank statements from 31 August to 13 October 2018. The Applicant

also provided copies of e-mails between the Parties and between the Applicant and Shelter Scotland and a letter from the Respondent to the Applicant dated 30 September 2018, in which he stated his view that a standard contract had been offered and rejected, so there was no contract between them, that his daily rate for the room for people staying without contract was £35, that the total rental from 12 September 2018 to 23 October 2018 was £1,435, payable in advance, that the Applicant had already paid £316.66 plus £550 and that the balance was, therefore, £568.34, with all monies paid to date being set against the outstanding rent. In later e-mails, the Respondent had agreed to a termination date of 3 October 2018, with the rent being adjusted accordingly.

The papers which accompanied the application also included an e-mail from the Respondent to Shelter Scotland dated 5 October 2018, in which he repeated many of the points set out in his letter of 30 September to the Applicant and stated that the arrangement was not covered by the tenancy deposit scheme as the Applicant was on his daily rate terms and any monies that may or may not have been intended for the purpose of a deposit had now been used to settle the debt, based on the daily rate of £35.

The Applicant provided the Tribunal with confirmation from each of the three approved tenancy deposit schemes in Scotland that they did not hold a deposit in respect of the Property.

On 25 January 2019, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and invited the Respondent to make written representations by 29 January 2019.

On 15 February 2019, the Respondent submitted written representations to the Tribunal. They reiterated in large measure the views set out in his letter of 30 September to the Applicant and his e-mail of 5 October 2018 to Shelter Scotland. He stated his view that the Applicant had, in effect, rejected the contract that he had asked her to sign, so could not then demand that some clauses were in force when she had rejected all others. It could not be assumed, therefore, that the deposit clause remained in force.

At the request of the Respondent, the Case management Discussion scheduled for 18 February 2019 was postponed.

**Case Management Discussion**

A Case Management Discussion was held at Glasgow Tribunals Centre on the afternoon of 29 April 2019. The Applicant was present and was accompanied by Miss Maxine Semczyszyn. The Respondent was not present or represented.

The Applicant explained to the Tribunal that the payments to the Respondent were based on one-half of the rent at £850 per month, together with £150 per month for Council Tax. She had been unhappy about paying for the four days before she had moved in, but had done so. The payment of £316.66 was, therefore, rent and Council Tax from 12-30 September and the payment of £370.97 covered the period from 1-23 October. She had moved out on 4 October, with the agreement of the Respondent, but was content to pay up to 23 October, as that was the date she had stated when giving one month's notice. All she was looking for from the process was the return of her deposit of £550.

**Reasons for Decision**

Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") provides that a landlord who has received a tenancy deposit

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 certain information as set out in Regulation 42 of the 2011 Regulations.
Regulation 9 of the 2011 Regulations allows a tenant who has paid a deposit to apply to the Tribunal for an Order under Regulation 10, which states that if the Tribunal is satisfied that the landlord did not comply with any duty in Regulation 3, it **must** order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit.
Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.
The Tribunal was satisfied that it had before it all the information and documentation it required and that it would determine the application without a hearing.
The Tribunal was in no doubt that the payments, totalling £550, made by the Applicant to the Respondent were a deposit within the definition of Section 120(1) of the Housing (Scotland) Act 2006 and that the Respondent was under a duty to lodge the deposit with an approved scheme. The Respondent had stated in a text of 20 September 2018 that "the money will be deposited in the deposit scheme". The tribunal noted that, at that date, there was an assumption that a written lease would follow. In the event, the lease which was based on the Scottish Government's Model Private Residential Tenancy Agreement, was not signed, but the Tribunal was of the view that both Parties had acted on the faith of a lease between the Respondent, as landlord and the Applicant and co-tenant, as tenants, commencing on 12 September 2018, at a rent of £850 per month and with a deposit of £1,100, one half of which was paid by the Applicant, the remaining one-half by her co-tenant. The Respondent had accepted the payment of £550 and had stated in terms that it was a deposit.
The Parties had subsequently agreed that the Applicant's tenancy would end on 3 October 2018, although the Applicant had actually moved out one day later. There had been disagreement as to the actual start date, the Applicant believing she should pay rent from the date she moved in (16 September 2018), the respondent stating that rent was due from 12 September, but the Tribunal noted that the Applicant was content to pay, and had paid, rent from 12 September to 23 October 2018.
The Tribunal noted from copy bank statements that the Applicant had paid rent of £316.66 "Sept Thornwood Road" and £370.97 "Rent October", a total of £687.63. Her share of the monthly rent was £425, with a further £75 for Council Tax. The Respondent had accepted these payments.
The Tribunal rejected the Respondent's claim that the arrangement had "converted" to a daily rate of £35 when the Applicant failed to sign the lease. Both parties had initially acted on the faith of the proposed lease and the deposit had been paid and accepted. By failing to comply with the requirement to lodge it with an approved scheme, the Respondent had denied the Applicant the opportunity to challenge the amount he was taking by way of rent. The Respondent was not entitled to retain the deposit in his own funds and to apply it as he thought fit. Had he lodged it with an approved scheme, both parties would have been able to make representations prior to an impartial body determining how much, if anything, should be refunded to the Applicant. The very purpose of the Regulations, to protect deposits, had been frustrated by the Respondent's failure. The duty to lodge the deposit remained, even if the tenancy ended before the expiry of 30 working days.

The Tribunal determined that, whilst it had never been reduced to writing, there was a lease between the Parties. The Applicant's share of the rent was £425 and she had also been paying to the Respondent a further sum of £75 per month for Council Tax. The Applicant had honoured the initially agreed terms, had paid the agreed deposit of £550 and had paid the rent and Council tax contributions from the date required by the Respondent (12 September 2018) down to the date on which the Applicant's period of notice expired (23 October 2018). The Respondent was not entitled to impose a change in those terms, simply as a result of the Applicant expressing dissatisfaction with some of the terms of the proposed written lease. The Tribunal, having determined that the Respondent had failed to comply with the requirement to lodge the deposit in an approved scheme, had to then decide the amount that it would order the Respondent to pay to the Applicant in respect of that failure. The Tribunal was of the view that the Respondent's failure was serious and that the Applicant had been put to considerable inconvenience by having to pursue the matter. The Applicant had, however, told the Tribunal that she was content with having paid rent at the rate agreed at the outset, from 12 September to 23 October 2018 and she was seeking nothing more than the return of the deposit of £550 and the Tribunal was mindful of the very reasonable position being taken by the Applicant, who simply wanted the matter brought to an end.

**Decision**

The Tribunal determined that the Respondent had failed to comply with the requirement set out in Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 to lodge a deposit with an approved tenancy deposit scheme, and ordered that the Respondent pay to the Applicant the sum of £550 in respect of that failure.

**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.**

Mr George Clark

**Legal Member/Chair**

29 April 2019

**Date**