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 Regulations 3 and 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/19/0051

Re: Property at 79 Wallbrae Road, South Carbrain, Cumbernauld, G67 2PD ("the Property")

Parties:

Ms Jennifer Potter, ("the Applicant")

Ms Louise Prunty, Studio 102B, 48-52 Washington Street, Glasgow G3 8AZ ("the Respondent")

Tribunal Members:

Jim Bauld (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment of the sum of Five hundred and fifty pounds (£550) should be made in favour of the applicant.

- **Background**

An application was made under rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations"). A case management discussion was fixed to take place on 26 July 2019

- **The Case Management Discussion**

The applicant attended the Case Management Discussion ("CMD") along with her partner, Alexander McKenna. Mr McKenna had also resided with the applicant at the property in Wallbrae Road from January 2012 until the tenancy ended..

The respondent did not attend but had written to the tribunal on 20 July 219 indicating she would not be in attendance.

The tribunal explained the purpose of the CMD to the applicant. The tribunal also explained that in terms of the Tenancy Deposit Scheme (Scotland) Regulations 2011, the tribunal could not make any decision regarding the return of a deposit. The tribunal's powers were restricted to making awards in terms of the Tenancy Deposit Scheme (Scotland) Regulations 2011.The tribunal explained the provisions of the regulations to the applicant.

The applicant indicated that she wished to proceed on that basis

The tribunal asked various questions of the applicant and her partner which they answered honestly and openly. They acknowledged they had received a copy of the correspondence sent by the respondent to the tribunal dated 20 July

They did not accept that they had left the property in as poor a condition as claimed by the respondent. They accepted that there was damage to internal walls caused by the applicant's child drawing on them. However they stated that the respondent had told them they did not require to remedy that damage as the respondent intended to refurbish and redecorate the property at the end of the tenancy to market it for sale. The applicant produced copies of screenshots of an exchange of text messages between the parties dated from 8 to 12 November. In those messages the respondent indicates that she will not seek to make deductions from the deposit for "wear and tear or decorating/painting" as she indicated she would be doing that anyway.

The applicant indicated the tenancy had ended on 18 November 2018. The deposit which had bene paid in May 2011 had been £550 and it has never been repaid by the respondent to the applicant. The deposit had never been placed in a registered Tenancy Deposit Scheme.

- **Findings in Fact**

The applicant and respondent were respectively tenant and landlord of a the property from May 2011 until 12 November 2018

The tenancy was a short assured tenancy under the Housing (Scotland) Act 1988

A deposit of £550 was paid at the commencement of the tenancy

The respondent was required in terms of the Tenancy Deposit Scheme (Scotland) Regulations 2011 to lodge the deposit with an approved tenancy deposit scheme

The respondent has never lodged the deposit with such a scheme

- **Reasons for Decision**

There seemed to be no dispute that a tenancy had been created between the parties and that a deposit had been taken. The correspondence from the respondent to the tribunal confirmed the applicant's position

The respondent's letter of 20 July to the tribunal confirms her knowledge that the deposit had been taken. Although she states in that letter that she "did not know about the deposit scheme" she then says that she thought it "had started after my tenant moved in". This clearly indicates that she was area of the existence of the scheme and as a landlord she should have been aware of her duties under the scheme and she should have ensured that any deposit held should be lodged. She has failed to lodge the deposit for a period of over seven years.

The tribunal has no option but to accept that the respondent has failed in her duty to lodge the tenancy deposit and has also failed to provide the required prescribed information to the tenant all as required by the Tenancy Deposit Scheme (Scotland) Regulations 2011

The tribunal having decided that there has been such a breach is then obliged in terms of Regulation 10 of the 2011 Regulations to make an order that the landlord pay an amount not exceeding three times the amount of the deposit. The payment is not a form of compensation. Various previous decisions, both from the sheriff courts and from the tribunal, have indicated that it should be considered a form of sanction

A recent Upper Tribunal decision has indicted that in deciding the appropriate amount of an award, the tribunal should not impose similar penalties on a landlord who has numerous properties and runs a business of letting properties and a landlord who has only one property which they own and let out

In this application, the applicant accepted that the respondent fell into the latter of these two categories. She was a landlord who only had one property which was owned and let out by her.

The tribal considered the factors which applied in this case. Although accepting the respondent was not an experienced landlord, she was clearly aware of the existence of the scheme and the deposit had been unprotected throughout the whole period of

time form the introduction of the regulations. The deposit has never been repaid. . As a consequence of the landlord's breach the tenant was deprived of his right to invoke the dispute resolution service provided under Part 6 the regulations to settle issues about dilapidations at the end of the tenancy.

In these circumstances the tribunal takes the view that the amount of the award should be towards the lower end of the possible scale of sanction. The applicant indicated that she only wished to receive a sum equivalent to the deposit paid.

In the circumstance the tribunal takes the view that an appropriate award would be Five hundred and fifty pounds (£550) being the equivalent of one month's rent and the same figure as the d posit paid by the applicant.

- **Decision**

The tribunal determines that an order for payment of the sum of Five hundred and fifty pounds (£550) should be made in favour of the applicant.

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.

J Bauld

Legal Member/Chair **Date** 26 July 2019