



**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/23/3651

**Re: Property at 9 2/2 Kaims Terrace, Livingston, West Lothian, EH54 7EX (“the
Property”)**

Parties:

**Mr Stephen McCann, 9 2/2 Kaims Terrace, Livingston, West Lothian, EH54 7EX
(“the Applicant”)**

**Mr Stephen Nelson, Dorothy Nelson, 53 Station Road, Broxburn, West Lothian
(“the Respondents”)**

Tribunal Members:

Graham Harding (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Applicant was in breach of their obligations in
terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations
2011 and that the Applicant must pay the Respondent the sum of £1012.50.**

Background

1. By application dated 11 October 2023 the Applicant applied to the Tribunal for a decision under Regulation 9 of the tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicant submitted a copy of correspondence and a certificate from Safe Deposits Scotland with prescribed information and a copy Section 33 Notice from the Respondent to the Applicant together with Housing Benefit and Council Tax information in support of the application.

2. By Notice of Acceptance dated 20 October 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion ("CMD") was assigned.
3. Intimation of the CMD was served on the Respondents by Sheriff Officers on 22 November 2023.
4. By email dated 23 November 2023 the Respondents submitted written representations to the Tribunal.
5. By email dated 5 and 16 January 2024 the Applicant submitted further written representations to the Tribunal.

The Case Management Discussion

6. A CMD was held by teleconference on 17 January 2024. The Applicant attended in person. The Respondents also attended in person.
7. It was agreed that the parties entered into a tenancy that commenced on 11 November 2010 and that at the commencement of the tenancy the Applicant paid the Respondents a deposit of £675.00. It was also agreed that the 2011 Regulations had not been in force at that time and that the deposit could lawfully be retained by the Respondents until January 2012 or shortly thereafter.
8. The Tribunal noted that the Respondents had not lodged with Safe Deposits Scotland until 28 August 2023. It was accepted that the deposit had been lodged with Safe Deposits Scotland more than 11 years late.
9. For the Respondents, Mr Nelson explained that although they had owned four let properties, they had never thought of themselves as professional landlords and that the business had just been a sideline. He explained that they had used a letting agent to source tenants and to do a credit check but beyond carrying out annual gas safety checks they had not kept up to date with other landlord legislation and had been unaware until a few months earlier of the 2011 Regulations.
10. Mr Nelson advised the Tribunal that the Respondents throughout the time they had been landlord until recently had never put their tenants' deposits into an approved scheme. He said they had never made any deductions from a tenant's deposit but had always repaid them in full.
11. Mr Nelson said that the Respondents had now disposed of three of the properties and their daughter was living in the fourth. He said that the Respondents had always treated their tenants like members of the family and had never increased rents even when they should have.
12. Mr Nelson suggested that although the Applicant's rent had remained at £575.00 throughout the tenancy it should have been increased to about £900

per month but that the Respondents had not wanted to do that to the Applicant because they were aware of his difficult circumstances.

13. Mr Nelson advised the Tribunal that this was the first occasion they had appeared before the Tribunal in a Tenancy deposit application. He submitted that the failure to lodge the deposit in accordance with the regulations had been due to an oversight in that the Respondents had been unaware of the regulations and not due to any deliberate act on the part of the Respondents. He submitted that there had been no prejudice to the Applicant as the deposit had been kept safe and then placed with Safe Deposits Scotland and then transferred to the Applicant's new landlord when the property was sold with the Applicant as a sitting tenant. Mr Nelson said that the Applicant had been told twelve months in advance that the property was going to be sold but had not moved out of the property. The Tribunal queried what relevance this had and it was accepted by the Respondents that it was not relevant. Mrs Nelson submitted that the Respondents felt that they had been considerate landlords and that the Applicant would not have been able to have remained in the property if they had treated it more as a business.
14. Mr Nelson suggested that the Regulations had been introduced to protect tenants from unscrupulous landlords who kept tenants' deposits without reason and that the Respondents were not like that and had been good to the Applicant and they were disappointed that the Applicant had made the application.
15. In response the Applicant expressed his disappointment at being served with the Section 33 Notice and being told to make himself homeless.
16. It was agreed that the application was timeous in terms of Regulation 9 and that the Respondents were in breach of Regulation 3 and that as a result in terms of Regulation 10 the Tribunal must impose a sanction on the Respondents not exceeding three times the deposit.
17. The parties accepted that the Tribunal had sufficient information before it to make a decision and Mr Nelson asked that the Tribunal exercise its discretion with regards to the level of sanction to be imposed.

Findings in Fact

18. The parties entered into a tenancy that commenced on 11 November 2010 at a rent of £575.00 per calendar month.
19. The Applicant paid a deposit of £675.00 to the Respondent at the commencement of the tenancy.
20. The Respondent lodged the deposit with Safe Deposits Scotland on 28 August 2023.

21. The deposit was lodged more than 11 years after the commencement of the 2011 Regulations.
22. The Respondents previously four rental properties and never lodged deposits in any approved schemes until 2023.
23. The Respondents have not previously been sanctioned for the late lodging of a tenant's deposit.
24. The Respondents did not increase the Applicant's rent throughout the tenancy and were acknowledged by the Applicant as being good landlords.
25. The Applicant's tenancy with the Respondents ended on 13 October 2023 when the property was sold with the Applicant as a sitting tenant and the Respondents arranged for the deposit to be transferred to the new landlord's Tenancy Deposit Scheme.

Reasons for Decision

26. The Respondents failed to comply with regulation 3.(1)(a) of the 2011 regulations in that they failed to lodge the Applicant's deposit with Safe Deposits Scotland after the coming into force of the 2011 Regulations. The deposit was lodged more than 11 years late. The application was made timeously.
27. In terms of Regulation 10 the Tribunal, if satisfied that the Respondents did not comply with any duty in Regulation 3, must order them to pay the Applicant an amount not exceeding three times the deposit. It is well settled that the maximum award should be reserved for the most serious cases where a tenant's deposit has been unsecured for a long period and the landlord has deliberately ignored the regulations. The Respondents ought to have been well aware of the regulations given that they owned four properties even although they did not consider themselves professional landlords. The Applicant's deposit was unsecured for a very long period and this had to be taken into account by the Tribunal. Although the failure to comply with the regulations was a serious one, the Tribunal was satisfied that the Respondents had not deliberately flouted the regulations but rather were woefully ignorant of them. In reaching its decision the Tribunal has acknowledged that the Respondents had been accepted by the Applicant as good landlords throughout the tenancy although perhaps the relationship had not ended well. Given that the Respondents have not been sanctioned previously for a breach of the 2011 Regulations and although the Applicant's deposit was unprotected for a very substantial period the Tribunal finds in the circumstances that it is appropriate to impose a sanction in the mid-range of that available to the Tribunal.

Decision

28. The Respondent shall pay the Applicant the sum of £1012.50.

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.

Graham Harding
Legal Member/Chair

17 January 2024
Date

