



**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/23/3545

Re: Property at 1/3 10 Archerhill Square, Glasgow, G13 4TD (“the Property”)

Parties:

**Mr Obinya Anyanwu, 1/1 10 Hutchenson Road, Thornliebank, Glasgow, G46 7JG
 (“the Applicant”)**

**Mr Kashif Naeem, 68 Fraser Street, Cleland, Motherwell, ML1 5PX (“the
Respondent”)**

Tribunal Members:

Fiona Watson (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order is granted against the Respondent for
payment of the undernoted sum to the Applicant:**

Sum of SIX HUNDRED AND SEVENTY-FIVE POUNDS (£675.00) STERLING

- Background
- 1. An application was submitted to the Tribunal under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. Said application sought an order be made against the Respondent on the basis that the Respondent had failed to comply with his duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).

- The Case Management Discussion

2. A Case Management Discussion (“CMD”) took place on 15 January 2024 by conference call. Both parties were personally present and represented themselves.
3. The Applicant sought an order from the Tribunal on the basis that the Respondent had failed to comply with their duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the 2011 Regulations.
4. The Applicant submitted that they had entered into a tenancy with the Respondent which commenced 5 August 2023 and ended 10 September 2023. A copy of the tenancy agreement was lodged with the application. The Applicant paid a £475 deposit to the Respondent prior to the start of the tenancy. The Applicant vacated the property on 10 September 2023 following service of a Notice to Leave. The Applicant had made a number of requests for repayment of his deposit, which had still not been repaid.
5. A separate application raised under Rule 111 under case reference FTS/HPC/CV/23/3557, seeking a payment order for repayment of the deposit to the Applicant was also considered by the Tribunal at the CMD.
6. The Respondent submitted that he had made a mistake in failing to lodge the deposit in an approved deposit scheme. The Respondent accepted that the deposit should have been lodged in a scheme. It was submitted that due to the fact that the tenancy was short-lived, and the “exceptional nature” of the tenancy, he had failed to lodge the deposit. It was submitted that he had intended to return the deposit in full to the Applicant within 30 days of the start of the tenancy due to the Applicant leaving the tenancy so quickly, but that the Applicant had failed to meet with the Respondent on an agreed date to handover keys and had failed to agree any deductions from the deposit, and following emails going back and forth between the parties, repayment of the deposit was not achieved. It was submitted that at the time, the Respondent had just returned to the UK from working in Saudi Arabia and his children were starting back at school and it was a very busy time. The Respondent advised that the Property had previously been let to a tenant and their deposit had been properly lodged in a tenancy deposit scheme. The Respondent was aware of his legal obligations, but due to the short duration of the tenancy and his disagreement with the Applicant around the time of his departure, he had failed to lodge the deposit properly. It was submitted that the Applicant had not behaved reasonably in his communications with the Respondent.

- Findings in Fact

7. The Tribunal made the following findings in fact:

- (a) The parties entered into a short assured tenancy which commenced 5 August 2023;

- (b) The Applicant paid a deposit of £475 to the Respondent;
- (c) The Respondent failed to lodge the deposit of £475 into an approved tenancy deposit scheme under Regulation 3 of the 2011 Regulations;
- (d) The Respondent failed to provide the statutory information to the Applicant under Regulation 42 of the Regulations;
- (e) The Tenancy ended on 10 September 2023;
- (f) The Deposit had not been returned to the Applicant.

- Findings in Law

8. The Tribunal made the following findings in law:

8.1 The Respondent was in breach of their duties under Regulation 3 of the 2011 Regulations, which states as follows:

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.

8.2 The Respondent was in breach of their duties under Regulation 42 of the 2011 Regulations, which states as follows:

42.—(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).

(2) The information is—

(a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;

(b) the date on which the tenancy deposit was paid to the scheme administrator;

(c) the address of the property to which the tenancy deposit relates;

(d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;

(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and

(f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.

(3) The information in paragraph (2) must be provided—

(a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or

(b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.

8.3 The Tribunal must grant an order in terms of Regulation 10 which states as follows:

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.

- Reasons for Decision

9. The Tribunal was satisfied that the Respondent was in breach of their duties under Regulations 3 and 42 as aforesaid. This was by the Respondent's own admission.
10. The 2011 Regulations were introduced to provide security for tenants in paying over deposits to landlords and to address an issue with some landlords taking tenancy deposits and then failing to pay them back where they were lawfully due at the end of the tenancy. The 2011 Regulations also provide that parties have access to an independent and impartial dispute resolution mechanism within a scheme to address any deposit deductions which require to be considered.
11. By their failure to lodge the deposit into an approved tenancy deposit scheme, and the continued failure to repay same to the Applicant, the deposit had not been protected for a period of 5 months to the date of the CMD.
12. The Tribunal noted that the Respondent was aware of his obligation to lodge the deposit in terms of the Regulations, and had done so in a previous tenancy. The Tribunal noted that the tenancy had been of a very short duration and noted the Respondent's submissions that he had intended to return the deposit within 30 days of the start of the tenancy but due to disagreements with the Applicant, this had not been achieved. The Tribunal did not find it satisfactory that the Respondent had continued to fail to repay to the Applicant the deposit held, some 5 months on. Whilst it was noted that there was a disagreement between the parties as regards deductions from the deposit, the Respondent by his failure to lodge the deposit with a scheme, had deprived the tenant of access to a scheme arbitration service to determine whether or not the landlord was entitled to withhold said deposit.
13. The Tribunal considered that taking all of these factors into account, a reasonable sum to be awarded is £675.

- Decision

14. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant in the undernoted sum:

SIX HUNDRED AND SEVENTY-FIVE POUNDS (£675) 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.

Fiona Waston

Legal Member/Chair

Date: 15 January 2024