



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 3,9 &10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”)**

**Chamber Ref: FTS/HPC/PR/20/1093**

**Re: Property at 5/3 503 Stobcross Street, Glasgow, G3 8GL (“the Property”)**

**Parties:**

**Mr Allan Hamilton, 7 Bearehill Gardens, Brechin, Angus, DD9 6LW (“the Applicant”)**

**Mr Iain MacKinnon, C/O Infiniti Properties, 1016 Argyle Street, Glasgow, G3 8LX (“the Respondent”)**

**Tribunal Members:**

**Susan Christie (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order be granted for the Respondent to pay the sum of £1,102 to the Applicant.**

**Background**

1. The Applicant made the application to the Tribunal on 26 February 2020. It is made under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”).
2. The Notice of Acceptance of the application by the Tribunal is dated 28 May 2020. Simultaneously, a Direction was issued whereby the Tribunal directed the Applicant to provide a written submission in clarification of matters detailed therein, within 14 days of receipt of it. The written submission was provided timeously.
3. Written Representations were provided by the Respondent’s Representative on 8<sup>th</sup> and 23<sup>rd</sup> July 2020.
4. On 30 July 2020, the Tribunal noted that Mr Jack Hamilton is appointed as the Applicant’s Representative.

5. A Case Management Discussion was fixed to take place by conference call on 10 August 2020 at 2p.m.
6. On 3 August 2020 a further direction was issued by the Tribunal and directed the Applicant to be prepared to address the following question at the Case Management Discussion, namely 'What breach of Regulation 3 (of the Regulations) is the applicant alleging?'
7. At the Case Management Discussion on 10 August 2020. Mr Jack Hamilton represented the Applicant and Ms McPartlin represented the Respondent. A detailed discussion took place exploring the history of the let of the Property, the tenants and the relevant legal provisions were discussed. Those latter discussions centred around the Applicant referring to the terms of regulations 3 and 24 of the Regulations and an exploration of the interpretation of the Regulations and when the deposit was 'received'. The outcome was to adjourn to a further Case Management Discussion at a date to be afterwards fixed.
8. Following on from those discussions, an application for amendment of written submissions to introduce a new issue was submitted on behalf of the Applicant. This requested the Tribunal also consider Regulation 3, part (1)(b) (duty to provide the tenant with the information required under regulation 42, all as detailed in regulation 42). It also contained an outline submission on behalf of the Applicant. The Respondent's Representative responded in writing.

**The Second Case Management Discussion (CMD)- 7 October 2020, by conference call at 10 a.m.**

9. Mr Jack Hamilton represented the Applicant and Ms McPartlin represented the Respondent. I referred to the document produced by the Legal Member following on from the earlier Case Management Discussion. It struck me that as no conclusion had been reached beforehand that it might be appropriate firstly to seek to agree a timeline of events. That was done and the facts agreed form the findings in fact detailed below. The detailed discussions-
  - (a) On 13 September 2018, a Private Residential Tenancy over the Property was entered into between the Respondent, the Applicant and a third party 'Mr S' for the purposes of this Decision. The start date of the tenancy being 13 September 2018. There are two Guarantors mentioned at Part 38, KH and DS.
  - (b) The Scottish Government Model Private Residential Tenancy Agreement (PRTA) was used. Part 11 deals with the Deposit. One was taken of £825 and the Scheme Administrator is Safe Deposits Scotland. It was paid into the scheme and secured the deposit for the Applicant and Mr S as tenants.
  - (c) On 1 October 2018, the deposit was lodged into the tenancy deposit scheme with Safe Deposits Scotland, in the names of the Applicant and Mr S.
  - (d) On 24 April 2020, an e mail was sent to the letting agent by Mr S enclosing an attached letter giving two months' notice to terminate the current tenancy agreement. The letter is not with the papers in this application. It later transpired that the Applicant's Representative said there had been a separate e mail from Mr S to them, said to be on 10 June 2020 sent only by Mr S which gave notice that he intended to leave giving 28 days' notice from 13 June 2020.

- (e) On 23 May 2019, the Applicant intimated to the Respondent's Representative as letting agent that Mr S intended to leave the Property. This was done in an informal way. The Applicant wished to remain in the Property. The Applicant identified a replacement tenant for Mr S as being 'Ms E', for the purposes of this Decision. An email exchange followed where, it was explained by the letting agent to both the Applicant and Mr S that as the rooms in the Property were not let out separately and the tenancy was a joint one, they could not accept the Notice unless everyone leaves. The reasoning behind this as down to the ingoing inventory and the deposit. The letting agent suggested that the way around this would be for the incoming new tenant to agree to accept the Property as still being in the condition as per the incoming inventory and the new tenant could then return to Mr S his share of the deposit in a private transaction. Otherwise, it might mean both tenants having to move out while checks could be carried out, for the deposit to be dealt with and any new tenancy starting a few days later. The Applicant provided the contact details for Ms E, the incoming tenant.
- (f) On 16 July 2019, the Parties and Ms E signed a Private Residential Tenancy(PRT) over the Property. The start date of the tenancy being 14 July 2019. There is one Guarantor mentioned at Part 46, KH.
- (g) The Scottish Government Model Private Residential Tenancy Agreement (PRTA) was used, albeit the terms were not identical to the first. I considered the contractual terms: 'The Landlord must lodge any deposit they receive with a tenancy deposit scheme within 30 working days of the start date of the tenancy. A tenancy deposit scheme is an independent third-party scheme approved by the Scottish Ministers to hold and protect a deposit until it is due to be repaid. At the start date of the tenancy or before, a deposit of £825.00 will be paid by the Tenant to the Landlord. The Landlord will issue a receipt for the deposit to the tenant...The scheme administrator is Safe Deposits Scotland...; At the end of the tenancy the landlord should ask the tenancy deposit scheme to release the deposit and the amounts payable to each party. If the tenant disagrees with the amount, the scheme administrator will provide a dispute resolution mechanism.'
- (h) On 17 July 2020, the Applicant and Ms E signed another document called 'Agreement to Property Condition as per initial ingoing inventory'.
- (i) Evidence was provided of a bank transfer received by Mr S of £412.50 from Ms E on 23 July 2019.
- (j) During the period 4 September 2020 to 8 October 2020, the Applicant's Representative said 22 calls were made by the Applicant and the Guarantor KH between them to the letting agent's office about the deposit. Telephone records were produced and although these were not examined in any detail, it was not disputed that some calls were made.
- (k) On 8 October 2019 Safe Deposits Scotland acknowledged receipt of the Respondent's Representative's proposal for Deposit Repayment of £825 to the Agent. It explained that if the tenant agrees with the proposal by 19 November 2019, it will let them know that the proposal has been accepted and will pay the Deposit within 5 working days of receiving the tenant's agreement.
- (l) On 28 October 2020, the Respondent's Representative was told that the tenant had now agreed to the repayment request.

- (m) On 30 October 2020, the Respondent's Representative received £825 from Safe Deposits Scotland.
  - (n) On 5 December 2019, Safe Deposits Scotland received £825 as the deposit for the Property with the name of the tenants being the Applicant and Ms E.
  - (o) On 6 December 2020, the Respondent's Representative forwarded onto the Applicant the confirmation of deposit and the prescribed information. It was flagged up to the Applicant by Safe Deposits Scotland in that e mail that 'Our records indicate that your tenancy start date was 1 July 2019. This suggests that your deposit was protected outside the 20 working day period. You may be able to take action against your landlord for the late registration for your deposit.' It then detailed the role of the Tribunal but asked that the tenancy start date be checked and pointed out that the scheme cannot provide any advice in the process.
  - (p) The second PRT ended on 10 February 2020. The Deposit was repaid to the Applicant and Ms E of £772 (£825 less £53 for cleaning).
10. The Applicant's submissions are set out in writing within the papers. In summary he considers there was a breach of regulation 3 (1) (a) and (b) and regulation 42. He refers to there being a lapse of 146 calendar days between the commencement date of the tenancy and the deposit. He seeks a remedy equivalent to 3 times the deposit amount, highlighting that he considers the Respondent was in breach of the duty for a little over two thirds of the life of the second tenancy. That the Respondent failed to pay the deposit into an approved scheme within 30 working days of the beginning of the tenancy. He relied on the fact that telephone calls had been made after the tenancy commenced about the Deposit and that his subsequent enquiries suggested that there was a mechanism to change the names of the tenants with the scheme administrator available at the time and had been available for a couple of years. He referred to the cases of *Fraser v Meehan* 2013 SLT (ShCt) 119 and *Cooper v Marriott* 2016 SLT (ShCt) 99 as support for his submission that there needed to be no actual loss and that the remedy was a sanction.
11. The Respondent's submissions are also set out in writing within the papers. In summary, the original response was one of surprise that an application was made to the Tribunal as the Respondent's Representative did not consider there had been a breach of the Regulations based on the events that had occurred. She considered the application to release Mr S was not as simple as it seemed. She relied on Mr Hamilton not having had to suffer of the disruption of having to vacate the Property for a few days, or have the added cashflow inconvenience of paying a new deposit while the previous deposit was finalised was agreed that the deposit from the previous tenancy would be transferred to the new tenancy. and they considered that they had bent over backwards to facilitate the change of tenancy. She considered that the Applicant was seeking to exploit this agreement to his own financial gain. She considered they did not receive the tenancy deposit on 14 July 2020. She stated that they received the first deposit back on 30 October 2019 and registered the deposit of new on 5 December 2019 within 30 working days. During this CMD, she did not dispute or admit that calls had been made to her office They might have albeit she had no recollection of them. She did not wish further time to consider the paperwork produced and make enquiry about

those calls and was content for me to deal with it by deciding. She had accepted during the discussions on reflection, that they had been tardy in seeking to recover the deposit from the Scheme. She accepted in hindsight also that there was provision within the PRT for assignation at part 12, with permission from the landlord in writing and that might have been pursued. She was not aware that there was a mechanism for change of tenant's names with the approved tenancy deposit scheme provider at the time but was not in a position to contradict Mr Hamilton's word on that.

## Findings in Fact

- I. On 13 September 2018, a Private Residential Tenancy over the Property was entered into between the Respondent, the Applicant and a third party 'Mr S. The start date of the tenancy being 13 September 2018.
- II. The Scottish Government Model Private Residential Tenancy Agreement (PRTA) was used. Part 11 deals with the Deposit. One was taken of £825 and the Scheme Administrator is Safe Deposits Scotland. It was paid into the scheme and secured the deposit for the Applicant and Mr S as tenants.
- III. On 1 October 2018, the deposit was lodged into the tenancy deposit scheme with Safe Deposits Scotland, in the names of the Applicant and Mr S.
- IV. On 24 April 2020, an e mail was sent to the letting agent by Mr S enclosing an attached letter giving two months' notice to terminate the current tenancy agreement.
- V. On 23 May 2019, the Applicant intimated to the Respondent's Representative as letting agent that Mr S intended to leave the Property. The Applicant wished to remain in the Property. The Applicant identified a replacement tenant for Mr S as being Ms E. The Applicant provided the contact details for Ms E, the incoming tenant.
- VI. On 16 July 2019, the Parties and Ms E signed a Private Residential Tenancy over the Property. The start date of the tenancy being 14 July 2019.
- VII. The Scottish Government Model Private Residential Tenancy Agreement (PRTA) was used. Part 11 deals with the Deposit which is declared to be £825.
- VIII. On 17 July 2020, the Applicant and Ms E signed another document called 'Agreement to Property Condition as per initial ingoing inventory'.
- IX. A bank transfer was received by Mr S of £412.50 from Ms E on 23 July 2019.
- X. On 8 October 2019 Safe Deposits Scotland acknowledged receipt of the Respondent's Representative's proposal for Deposit Repayment of £825 to the Agent. It explained that if the tenant agrees with the proposal by 19 November 2019, it will let them know that the proposal has been accepted and will pay the Deposit within 5 working days of receiving the tenant's agreement.
- XI. On 28 October 2020, the Respondent's Representative was told that the tenant/Applicant had now agreed to the repayment request.
- XII. On 30 October 2020, the Respondent's Representative received £825 from Safe Deposits Scotland.
- XIII. On 5 December 2019, Safe Deposits Scotland received £825 as the deposit for the Property with the name of the tenants being the Applicant and Ms E. The source of these funds was from the repayment of the first deposit.

- XIV. The Applicant and Ms E put down a deposit of £825.
- XV. On 6 December 2020, the Respondent's Representative forwarded onto the Applicant the confirmation of deposit and the prescribed information.
- XVI. The second PRT ended on 10 February 2020. The Deposit was repaid to the Applicant and Ms E of £772 (£825 less £53 for cleaning).

## The Regulations

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.*

[

*(1A) Paragraph (1) does not apply—*

*(a) where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and*

*(b) the full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord,*

*within 30 working days of the beginning of the tenancy.*

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*(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.*

[

*(2A) Where the landlord and the tenant agree that the tenancy deposit is to be paid in instalments, paragraphs (1) and (2) apply as if—*

- (a) the references to deposit were to each instalment of the deposit, and*
- (b) the reference to the beginning of the tenancy were to the date when any instalment of the deposit is received by the landlord.*

]2

*(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.*

9.—

*(1) A tenant who has paid a tenancy deposit may apply to the [First-tier Tribunal]1 for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.*

*(2) An application under paragraph (1) must be made [...]2 no later than 3 months after the tenancy has ended.*

10.-

*If satisfied that the landlord did not comply with any duty in regulation 3 the [First-tier Tribunal]1 —*

- (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 [First-tier Tribunal]<sup>1</sup> 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.

24.—

- (1) A landlord must apply to the scheme administrator for repayment of any tenancy deposit paid to an approved scheme on, or as soon as is reasonably practicable after, the end of the tenancy.
- (2) The landlord's application must specify the date on which the tenancy ended and the amount of the tenancy deposit which, in the view of the landlord, should be—
  - (a) repaid to the tenant; and
  - (b) repaid to the landlord.
- (3) The tenant may apply for repayment of the tenancy deposit, but if an application for repayment has been made by the landlord in accordance with paragraph (1), or is made within 30 working days of the tenant's application, the scheme administrator must not progress the application.
- (4) The tenant's application must be made to the scheme administrator and specify the date on which the tenancy ended and the amount of the tenancy deposit which, in the view of the tenant, should be—
  - (a) repaid to the tenant; and
  - (b) repaid to the landlord.

42.— Landlord's duty to provide information to the tenant

- (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.
- (4) Where the landlord and the tenant agree that the tenancy deposit is to be paid in instalments—
  - (a) paragraphs (2) and (3) apply as if the references to deposit were to each instalment of the deposit, and

*(b) in relation to the information provided under paragraph (2)(a), confirmation of the cumulative amount of the tenancy deposit paid by the tenant in respect of each instalment after the first instalment.*

## **Reasons for Decision**

I was satisfied that I could make a decision without hearing evidence as the facts were sufficiently agreed and there was enough documentary evidence and written submissions already produced, including the documents I received by agreement, to allow me to do so.

I did not consider this was contrary to the interests of the Parties as they had declined the opportunity to examine the history any further and wished me to decide. It seemed to me that the substitution of one tenant for another became complicated due to the way it was handled. This was led by the letting agent. The approach taken was however agreed to by the Applicant, as he and the incoming tenant went along with it. An assignation was a possibility that came to my mind but needed landlord consent and it did not appear to have been considered by any Party.

The letting agent was dealing with the paperwork to set up the new tenancy on 16 and 17 July 2019 but did not apply for the return of the original deposit until 8 October 2019 (see the requirements in regulation 24 above). The explanation for this was given that it was later noticed during a compliance check that it had not been done. This was not necessarily accepted by the Applicant as he said they had called in some 22 times to the office about the Deposit after the start date to the second tenancy. The last contact being said to be on 8 October 2019, which was the same day it was deposited in the scheme. The Respondent's Representative did concede at the second CMD that in hindsight they had been tardy in seeking return of the first deposit. I gave the Parties an opportunity to consider whether they needed a further CMD or hearing to explore what they did not fully agree, including whether the calls were made and what was discussed if anything, but they declined and wished me to make a decision without further delay using the agreed timeline and basing the decision on the new tenancy agreement that was entered into, the first being terminated by agreement, but taking into account the information gleaned about the deposit history as a whole and how the circumstances which led to this application came about.

Therefore, the Applicant and Ms E (his partner) signed a new tenancy agreement on 16 July 2019 with a start date of 14 July 2019. This new agreement referred to a Deposit of £825 that was to be paid on or before the start date of the tenancy. Ms E transferred to the outgoing tenant Mr S one half of the deposit in a private transaction on 23 July 2019 as per a document produced.

The new PRT tenancy commenced on 14 July 2019. By my calculation under ordinary circumstances and when applying regulation 3 (1) (a) and (b), the duty on the landlord, in this case would be to comply with its terms by 25 August 2019 (within 30 working days of the beginning of the tenancy). They had not in fact applied for the return of the initial deposit which was in reality the source of funds for the second deposit until 8 October 2019. The Applicant was given until 19 November 2019 to accept the return for the full deposit to the agent. The paperwork showed and explained that if the tenant agrees with the proposal by 19 November 2019, it will let them know that the proposal has been accepted and will pay the Deposit within 5



working days of receiving the tenant's agreement. The Applicant did not consent until 28 October 2020 (14 working days later) and the full deposit was paid to the letting agent on 30 October 2019. It was then processed by the letting agent and paid into the new scheme on 5 December 2019, by my calculation some 5 weeks later- 26 working days. The fact of the matter was that they had a window of opportunity to comply with regulation 3 ( & regulation 24) by seeking to recover the first deposit timeously and then place it in the scheme again under the new tenants' names. Compliance within that window of opportunity would have been reliant on the Applicant timeously agreeing to the refund without qualification. It is observed he took around 14 working days to agree to the refund. It was however possible, even if accounting for the maximum 5 day period for the payment to be transferred by the scheme. I determined therefore that there had not been compliance with regulation 3. I also had regard to the obligations under regulation 24(1) above. I then had to consider what amount my order was to be fixed at under regulation 10. In so doing I reflected on the position of the Applicant, the two original Guarantors and Ms E as well as the full history that was particular to the let. To a degree, the Applicant still had some control over the deposit originally placed as his name was noted as a tenant. He needed to be asked when a request for payment was being made. For him, the deposit was unprotected for the 26 working days until placed anew. The Guarantors liability continued in respect of any payment due but not paid even after the termination of the first agreement but, there was no firm liability as there had been no call for liability. It seemed to me that the biggest risk had been to Ms E who had the deposit unprotected from the outset of the tenancy until 5 December 2019. The Respondent had engaged the Respondent's Representative company as the letting agent who dealt with all matters arising in the normal course of business and who has dealt with responding on his behalf in this application. The Respondent's Representative initially firmly believed there had been no breach of the Regulations, but the facts suggested otherwise on examination and she then accepted that there had been tardiness in attending to the business, explained in part by the request for repayment of the first deposit only being requested when it was revealed around a compliance check that showed the initial deposit had not been requested back. I did accept that there probably had been a check done and this might have been in response to the latter telephone contact initiated by the Applicant. I also took into account that it had taken the Applicant around 14 working days to consent to the refund thereafter of the initial deposit and it made me mindful that the Applicant had a role to play in facilitating a quick turnaround when the mistake was discovered. The mitigation is therefore limited. I am satisfied, having regard to the circumstances of this case and the terms of the Regulations an order for the Respondent to pay £1,102 should be made. This is double the net deposit recovered at the end of the tenancy and broadly recognising that for 5 out of the 7 months of the tenancy it was unprotected. This is not compensatory; it is a sanction.

## **Decision**

I order for the Respondent to pay the sum of £1,102 to 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.**

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**Legal Member/Chair**

**12 October 2020**  
**Date**