



**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/23/2066

Re: Property at 34 GF1 Leith Walk, Edinburgh, EH6 5AA (“the Property”)

Parties:

**Dr Rita de Sousa Matos Aresta, Flat 1, 8 Kimmerghame Place, Edinburgh, EH4
2GE (“the Applicant”)**

**MS Properties Edinburgh Limited, 6A Wardie Crescent, Edinburgh, EH5 1AG
 (“the Respondent”)**

Tribunal Members:

Melanie Barbour (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that there had been a breach of the Tenancy Deposit
Schemes (Scotland) Regulations 2011, and it would make an order for payment
of £500 in favour of the Applicant.**

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order against the landlord failure to lodge a tenancy deposit.
2. The application contained:-
 - a. Tenancy agreement;
 - b. Text messages

- c. Evidence from approved deposit schemes that they held no deposit for the property; and
 - d. Evidence of payment of the deposit.
- 3. Both parties then submitted written representations on 18, 21 and 29 August 2023 and 5 September 2023.
- 4. The case called for a case management hearing on 12 September 2023. The applicant appeared. Ms Jo Singh appeared on behalf of the respondent.

Case Management Hearing Discussion

- 5. The parties were both agreed on a number of matters which included, that there had been a tenancy between the parties.
- 6. There had been payment of £1800 of deposit paid by the applicant: made up of £1200 for deposit as set out in the tenancy agreement, and then a further £600 paid for "personal pet deposit".
- 7. That the £1200 had been repaid on 5 June 2023. A further £365.25 had been repaid from the £600 on 30 June 2023. The respondent had deducted a sum for damage to the doors in the flat.
- 8. The tenancy had commenced on 12 August 2021. The tenancy ended on 30 June 2023.
- 9. The deposit had not been placed into an approved scheme.
- 10. The respondent advised that deposit had not been paid into an approved deposit scheme. The applicant's nephew had managed the applicant's property accounts for 5 years. He had left the position in around 2021. They had to employ new staff. At the same time the applicant's nephew had died. The nephew's father had usually assisted with the accounts but was unable to do so due to his son dying. She advised that the applicant's nephew had passed away due to covid on 6 July 2021. His nephew's funeral had taken place on 20 July 2021. She advised that the family were sheikhs and their culture is that they will mourn for 40 days after a funeral. In effect that means that they do not leave their home. She advised the family were devastated to lose this family member. She advised that a new staff member had not put the money into the deposit scheme. The money had gone missing. They had other problems with the passwords to the approved scheme being changed by the new member of staff.
- 11. She admitted the deposit had not been paid into a scheme for the duration of the time they had the deposit. She apologised for this mistake. She accepted that it was a breach.

12. She advised that she considered the personal pet deposit was different and she did not think it had to be protected as it was only to deal with the pets. There were 2 dogs in the property. There had been damage to the property and they had retained some money to cover this damage.
13. They had 40 properties which were rented out. The respondent had been a landlord for around 12 years. She advised that they have procedures in place to pay the deposit into approved schemes. They usually lodge them within the 30-day period. She advised that the previous case referred to by the applicant in 2021 related to the same circumstances as this case, there had been a failure by the new member of staff to put that deposit into an approved scheme.
14. She advised that the applicant became aware in October 2021 that they had not put the deposits into a scheme and due to being in breach did not think that there was any point in putting the deposits into the scheme late.
15. The applicant advised she had been aware of the death of the family member, and that it appeared that the money had gone missing with the new member of staff. She said that she had not realised anything was wrong until she moved to her new property and got information that her new landlord had deposited her deposit into a scheme.
16. She considered that at the very least the landlord should and could have lodged the deposit into an approved scheme in October 2021 when they found out that there was a problem. She also referred to an earlier case she had found involving the landlord failing to place a deposit into a scheme. She thought the landlord's conduct was not fair.
17. She advised that in relation to the pet deposit, she had been told this deposit was separate to the other deposit. She advised that she did not think that the deduction made to that deposit was unfair. She noted however that the landlord had first advised that the door needed to be replaced at £200 per door, and after she challenged this, the landlord agreed that the cost of replacing a door was £40. She did not deny the damage was caused by the dogs.

Findings in Fact

18. The Tribunal made the following findings in fact:-
 - a. The Respondent was the landlord, and the Applicant was the tenant.
 - b. The Applicant had paid the Respondent a tenancy deposit on 17 July and 10 August 2021 totalling £1800 (£1,200 and a further £600).
 - c. The tenancy commenced on 12 August 2021.

- d. On around 3 June 2023 the applicant gave notice to end the tenancy. She asked about her deposit noting £1,200 was to be paid into Safe Deposit Scotland and the £600 was to be paid into a different account.
- e. Clause 11 of the tenancy agreement provides that a deposit of £1200 will be paid by the tenant. It states that the deposit will be placed with Safe Deposit Scotland.
- f. The tenancy agreement commenced on 12 August 2021.
- g. The tenancy ended on 30 June 2023.
- h. The application to the first-tier tribunal was accepted on 27 July 2023.
- i. The £1200 deposit was refunded to the applicant of 5 June 2023.
- j. From the personal pet deposit of £600, £234.75 was retained by the landlord; the remaining £365.25 was repaid to the applicant on 30 June 2023.
- k. The sum retained of £234.75 was to pay for damage to the property caused by the applicant's dogs.
- l. None of the applicant's deposit totalling £1800 was secured with an approved tenancy deposit scheme throughout the tenancy.
- m. The tenancy deposit had not been lodged with an approved tenancy deposit scheme within 30 working days of the tenancy commencing.

Reasons for Decision

19. The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits, and relevant to this case are the following regulations:-

Duties in relation to tenancy deposits

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.

Sanctions

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] 1 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.

20. First, I would note, that I consider the *personal pet deposit* to be a deposit which should also have been placed in an approved deposit scheme. The respondent was not able to point to any exception in the law which permitted *pet deposits* not to be secured in approved schemes.

21. The Respondent accepted that both deposits had not been paid into an approved scheme in accordance with the terms of the regulations. Therefore, the terms of regulation 10 are engaged, and the tribunal must order that the Respondent pay the Applicant an amount not exceeding three times the amount of their tenancy deposit. The amount to be paid requires to be determined according to the circumstances of the case, the more serious the breach of the regulations the greater the penalty.

22. In this case, I consider that a sum of £500 would be appropriate. While there has been a breach of the regulations, I consider that it is at the lower end of the scale in terms of seriousness.

23. In considering what penalty to impose, I have had regard to the verbal and written submissions of both parties.

24. Matters which I consider to be relevant in mitigation for the landlord are : - The fact that the deposits were paid back timeously. The fact that the landlord admitted their mistake. They apologised for this error. Although they deducted some monies for damage by the pets, the applicant confirmed that this deduction was not unreasonable. The time when the deposits had been paid to the respondent appeared to coincide with the death of a close family member and this appeared to have led to problems in the running of the business.

25. Matters which I consider exacerbate the breach are:- The fact that the landlord was aware of the deposit not being in a deposit scheme from October 2021. The fact the landlord has a number of properties and is an experienced landlord. The fact the applicant did initially dispute the cost of replacing the doors, although I note that the landlord did then agree to a cheaper door replacement. The fact that the respondent has had two previous decisions against them for breach of the tenancy deposit regulations. However the respondent provided some context for one of the decisions which they said related to the same time period as this application.

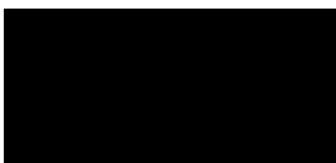
26. The total deposit money was significant at £1800 and it should have been secured. I consider that failure to place the deposit into a scheme is serious in itself, and more so when they were aware that the deposit was not in a scheme and decided not to rectify the breach, however on balance I accepted on this occasion that there had been challenging family circumstances which had led to the breach in the first place, and they had misunderstood that it would have been better to rectify the matter in October 2021. Although wrong, I considered that the respondent believed that a personal pet deposit was something different to a tenancy agreement deposit. In mitigation I place weight on the fact that the deposit monies were paid back timeously and there appeared to me no intention to withhold the deposit from the tenant. I do not consider that the tenant was unduly prejudiced by this failure of the respondent to secure her deposit. I consider that an award of £500 is reasonable as it reflects that there was a breach of the regulations, it is a significant figure, but it takes into account the mitigation of the respondent.

Decision

27. The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that there had been a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011, and it would make an order for payment of £500.00 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.



Legal Member/Chair

12 September 2023

Date

