



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit
Scheme (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/21/1495

Re: Property at 39 King Edward Street, Fraserburgh, AB43 9PL (“the Property”)

Parties:

**Miss Megan Orr, Mr Nathan Thomson, 39 King Edward Street, Fraserburgh,
AB43 9PL (“the Applicant”)**

**Miss Krystel Fleming, 9 Sunderland Street, Buckie, Moray, AB56 1RA (“the
Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order in the sum of Two hundred and seventy
five pounds (£275) Sterling should be granted in favour of the Applicants
against the Respondent.**

Background

- 1 The Applicants applied to the Tribunal under regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 seeking an order for payment as a result of the Respondent's failure to lodge their tenancy deposit with a tenancy deposit scheme.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 11st September 2021.
- 3 On 16 August 2021 the Respondent submitted a response to the application. In summary the Respondent conceded that she had not placed the deposit in

a deposit scheme within the statutory timescale. She explained that she had treated the payment of the deposit as rent, but appreciated this did not supersede her obligations as a landlord. The Respondent further noted that her landlord registration has lapsed, that she had been preoccupied with caring for her mother and her own pregnancy and that the relationship between herself and the Applicants had broken down.

The Case Management Discussion

- 4 The Case Management Discussion took place on 1st September 2021. Miss Orr was present and confirmed that she was representing both herself and Mr Thomson. Ms Fleming was present and represented by Ms Margaret Nash, Solicitor.
- 5 The Legal Member explained the purpose of the Case Management Discussion and asked parties to address her on the terms of the application.
- 6 Miss Orr explained that the Applicants had paid a deposit of £550 at the start of the tenancy in 2017. However the deposit wasn't lodged in a deposit scheme until 16th June 2021. Ms Orr confirmed that the Applicants were still residing in the property but were due to leave on the 13th September. She confirmed that they had received a certificate confirming that the deposit had been lodged in a tenancy deposit scheme, namely SafeDeposits Scotland. In response to questions from the Legal Member Miss Orr stated that she was of the view that she and Mr Thomson were due the maximum amount, namely three times the amount of the deposit which the Legal Member calculated to be £1650. She noted that the deposit had been unprotected for four years.
- 7 Ms Nash made reference to the written representations from Krystal Fleming, noting that the deposit had now been paid into an approved scheme. Ms Fleming was aware that the money should have been put into a deposit scheme albeit she had understood there had been an agreement with the Applicants regarding payment of rent at the start of the tenancy. She conceded that a payment was due and it would be at the discretion of the Tribunal. Ms Nash noted that the Applicants had recently given notice to leave the property, it was never a question of them not getting their deposit back. Ms Fleming was aware of her statutory responsibility in that regard. She had been disappointed as she had thought she had a good relationship with the Applicants. Ms Nash further advised that the Applicant would be looking to make a time to pay application if possible, as she was currently on maternity leave and would not be in a position to make payment immediately.
- 8 Ms Orr was given the opportunity to make final submissions. She advised that the deposit had been paid at an early stage in the tenancy. It had always been referred to as the deposit. Ms Orr disputed that there had been a good relationship with Ms Fleming and stated that Ms Fleming would have been well aware of her duties under the deposit regulations. In response to questions from the Tribunal Ms Orr confirmed that she would have no difficulty with payments via instalments.

Relevant Legislation

- 9 The relevant legislation is contained within the Tenancy Deposit Scheme (Scotland) Regulations 2011 which provide 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.”

“9.—(1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal 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 by summary application and must be made 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 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.”

Findings in Fact and Law

- 10 The Applicants and Respondent entered into a tenancy agreement in respect of the property which commenced on 26 May 2017.

- 11 The said Tenancy Agreement provides for a deposit of £550 to be paid by the Applicants to the Respondent.
- 12 The Applicant paid the deposit of £550 to the Respondent prior to the commencement of the tenancy.
- 13 The Respondent paid the deposit into an approved tenancy deposit scheme, namely Safe Deposits Scotland, on 16 June 2021.
- 14 The Respondent provided the Applicants with the deposit protection certificate from Safe Deposits Scotland.
- 15 The Applicants are due to vacate the property on 13 September 2021.
- 16 The Respondent is in breach of Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 by virtue of her failure to lodge the deposit within an approved tenancy deposit scheme and provide the Applicants with the prescribed information within thirty working days of the commencement of the tenancy.

Reasons for Decision

- 17 The Tribunal determined the application having regard to the application paperwork, the written representations from both parties and the submissions at the Case Management Discussion. The Tribunal considered it had sufficient information upon which to make a proper determination of the application.
- 18 The failure to comply with Regulation 3 was admitted by the Respondent in this case, and therefore Regulation 10 was engaged. On that basis the Tribunal had to consider what level of sanction would be appropriate having regard to the particular circumstances surrounding the breach.
- 19 The Tribunal considered the requirement to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach. In doing so the Tribunal took into account the fact that the deposit had remained unprotected for nearly the entire term of the tenancy, it being a matter of agreement that the Respondent had not paid the deposit into an approved deposit scheme until 16 June 2021, albeit the lodging of the deposit will now provide the Applicants with the necessary access to the independent dispute resolution mechanism provided by the scheme at the end of the tenancy.
- 20 The Tribunal could not however ignore the purpose of the 2011 Regulations, namely to penalise landlords to ensure they comply with the duty to protect and safeguard tenancy deposits. The provisions of Regulation 10 leave the Tribunal with no discretion where a landlord is found to have failed to comply

and permit an award of up to three times the deposit. In this case, the Tribunal did not consider an award at the higher end of the scale was warranted, particularly as the Respondent is not a professional landlord and had taken steps to ensure the deposit was placed in an approved scheme prior to the end of the tenancy. Balancing the competing factors in the particular facts and circumstances of this case, the Tribunal considered therefore that a sanction in the sum of £275 would be appropriate, being a sum equivalent to half the deposit.

- 21 The Tribunal therefore made an order against the Respondents in the sum of £275.
- 22 As an observation it was noted that the Respondent mentioned the prospect of pursuing a time to pay application, although Ms Orr did indicate at the Case Management Discussion that she would be willing to consider payments by instalment. On that basis the Tribunal did not consider there was any merit in adjourning proceedings further if agreement can be reached informally between the parties on a payment arrangement. However if that is not achievable the Respondent could request the Tribunal consider a time to pay application by way of seeking a review of this decision.

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.

Ruth O'Hare

Legal Member/Chair

1 September 2021

Date