



**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/20/0388**

**Re: Property at 349 Holburn Street, Aberdeen, AB10 7FQ (“the Property”)**

**Parties:**

**Mr Murdoch Anderson, Thistle Cottage, Main Street, Luthermuir, AB30 1YR  
 (“the Applicant”)**

**Mrs Karen McKee, trading as Aberdeen Rooms, 349 Holburn Street, Aberdeen,  
 AB10 7FQ (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
 Tribunal”) determined to make an order in the sum of Two hundred and fifty  
 pounds (£250) Sterling against the Respondent**

**Background**

- 1 By application dated 2 February 2020 the Applicant sought an order for payment as a result of the Respondents failure to lodge his deposit in an approved tenancy deposit scheme within the statutory timescales.
- 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 14 April 2020.
- 3 A copy of the application paperwork together with notification of the date, time and location of the Case Management Discussion was served on the Respondent by Sheriff Officers.

- 4 Due to the restrictions imposed by the Covid-19 pandemic, the Case Management Discussion was adjourned to 17 July 2020. Notification of the date and time of the Case Management Discussion together with the instructions for joining the conference call facility were sent to the Applicant and Respondent.
- 5 The first Case Management Discussion took place on 17 July 2020. The Respondent was present. The Applicant was not present nor was his representative. The Legal Member therefore adjourned the Case Management Discussion to give the Applicant an opportunity to attend. It subsequently transpired that the Applicant's Representative, Ms Nicola Peters had joined the conference call at the wrong time. A further Case Management Discussion was assigned for 1 September 2020.

### **The Case Management Discussion**

- 6 The Case Management Discussion took place on 1 September 2020. Both the Applicant's Representative, Ms Nicola Peters, and the Respondent were in attendance.
- 7 The Legal Member explained the purpose of the Case Management Discussion. She explained that the Tenancy Deposit Scheme (Scotland) Regulations 2011 were clear in that were the Tribunal to make a finding that there had been a breach it would be obliged to make an order for payment of up to three times the amount of the deposit. She then asked parties to explain their respective positions.
- 8 The Applicant's Representative explained that the Respondent had paid a deposit of £250 on 5 October 2019 when the tenancy commenced. The deposit had not been lodged with SafeDeposits Scotland, an approved deposit scheme, until 28<sup>th</sup> January 2020 which was out with the thirty day statutory timescales. The concern would therefore have been if anything had happened during that time, the deposit wasn't protected. The Applicant did not know this until he gave his Notice to Leave in January and found that the deposit wasn't in a scheme. The Legal Member queried whether the deposit had been returned to the Applicant. The Applicant's Representative explained that it was still in the deposit scheme, as the Applicant did not want to jeopardise the outcome of the proceedings before the Tribunal by applying for it to be returned. There had been no correspondence between the parties regarding the return of the deposit on that basis.
- 9 The Respondent confirmed that she agreed with the chronology of events as outlined by the Applicant's Representative. When the Applicant had given notice, she had realised the deposit was not in a scheme. She had then

immediately taken steps to pay the deposit to SafeDeposits Scotland. She was therefore not contesting the fact that the deposit had not been lodged with the scheme within thirty working days.

- 10 The Legal Member then explained that it appeared a matter of fact that the deposit had been lodged on 28<sup>th</sup> January 2020 which was beyond the termination date of the tenancy and therefore beyond the statutory timescale for lodging the deposit. Both parties had agreed that this was correct. The Legal Member therefore explained that she considered the Tribunal was able to make a finding that there had been a breach of the Regulations by the landlords. It would therefore be a matter of assessing what level of sanction would be appropriate having regard to the circumstances of the breach. She asked the parties to address her on that point.
- 11 The Applicant's Representative noted that it had been seven months since the tenancy had ended, and therefore the Applicant would be looking for the maximum amount of compensation. She explained again that the Applicant had not asked for his deposit back from the scheme as he didn't know if that would affect the outcome of the Tribunal proceedings and thought it best to leave it where it was.
- 12 The Respondent explained she had no excuse for not paying the deposit over to the scheme within the timescales. She handles a lot of deposits and on this occasion it had gone by the wayside. Following questions from the Legal Member, the Respondent clarified that she manages around forty tenancies. Aberdeen Rooms was a trading name for the business, and the properties were owned by herself and her husband. She did not know why the deposit was still in the scheme and had sent a letter to the Applicant giving instructions on how and where to claim the deposit, together with a photocopy of the certificate and prescribed information. She had not made any approaches to the scheme to claim the deposit. The Respondent concluded by stating that this was a simple mistake and arose from a failure to follow her own procedures. It was a genuine error, she had not tried to deceive anyone, and this was the first time such an error had occurred. The deposit had been secured as soon as she noticed the mistake. Given the circumstances, the Respondent considered the sum of £250 would be appropriate.
- 13 The Legal Member then gave parties an opportunity to make any final submissions. The Applicant's Representative stated again that the deposit wasn't lodged in the scheme when it should have been. The scheme was one of the main safety nets for a tenancy. If anything had happened in that time, the deposit would have been lost. It was not in a secure place. The Respondent declined to make any further submissions.

## Relevant Law

- 14 The relevant law is contained with 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**

- 15 The Applicant and Respondent entered into an Occupancy Agreement which commenced on 5<sup>th</sup> October 2019.
- 16 The occupancy arrangement between the parties is a “relevant tenancy” as defined by Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”).
- 17 The said Occupancy Agreement required the Applicant to make payment of a security deposit in the sum of £250.
- 18 The Applicant made payment of the security deposit in the amount of £250 on 5<sup>th</sup> October 2019.
- 19 The security deposit was lodged with Safe Deposits Scotland, an approved tenancy scheme as defined by section 122 of the Housing (Scotland) Act 2006, on 28 January 2020.
- 20 In terms of Regulation 3 of the 2011 Regulations, the deposit should have been lodged with an approved tenancy deposit scheme no later than 15<sup>th</sup> November 2019.
- 21 The Respondent was in breach of the duty under Regulation 3 of the 2011 Regulations.
- 22 The agreement between the parties terminated on 24 February 2020.
- 23 The deposit remains lodged with Safe Deposits Scotland and has not been claimed by either party.

## **Reasons for Decision**

- 24 The Tribunal determined the application having regard to the application paperwork and the verbal submissions from the Applicant’s Representative and the Respondent at the Case Management Discussion. The Tribunal was satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. The Tribunal was further satisfied that the substantive issues were agreed, therefore there was no requirement for a hearing in the matter.
- 25 The 2011 Regulations specify clear duties which are incumbent on landlords in relation to tenancy deposits. Regulation 3 requires a landlord to pay any deposit received in relation to a relevant tenancy to an approved tenancy

deposit scheme within thirty working days of the beginning of the tenancy. The deposit must then be held by the scheme until it can be repaid in accordance with the requirements of the Regulations following the end of the tenancy.

- 26 The Tribunal considered it could make a finding at the Case Management Discussion that there had been a breach by the Respondents of Regulation 3. This was a matter of fact agreed between the parties. The Tribunal therefore had to consider the provisions of Regulation 10 which requires that an order for payment be made against the landlord where the Tribunal makes a finding that there has been such a breach. Accordingly the Tribunal had to consider what sanction to impose having regard to the particular facts and circumstances of the case.
- 27 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 four months, it being a matter of agreement that the Respondent had not paid the deposit into an approved deposit scheme until 28<sup>th</sup> January 2020. The Tribunal noted that the deposit remained within the scheme, having not been claimed by either party. However, the Tribunal was conscious that this was a matter separate to the proceedings before the Tribunal, and therefore there was nothing to stop the Applicant from applying for the return of the deposit without further delay. Accordingly the Tribunal did not consider this to be a relevant matter when considering what level of sanction to award.
- 28 On the basis that the deposit was now lodged in a scheme, the Applicant would not suffer any detriment through a lack of access to the independent dispute resolution mechanism provided by the approved tenancy deposit scheme and the appropriate independent adjudication would take place on what deductions should be made from the deposit, in the event of a dispute between the parties. However, the Tribunal had to be mindful of the purpose of the sanction available to it, namely to ensure landlords comply in future with the duty to safeguard and protect deposits in circumstances where they have failed to do so.
- 29 The Tribunal accepted that the oversight in the Applicant's failure to lodge the deposit had been a genuine error and found her submissions to be credible in that regard. She had been entirely candid in her position at the Case Management Discussion. However it was clear that she was an experienced landlord and therefore, in her own admission, there was no excuse for the breach.
- 30 The provisions of Regulation 10 leave no discretion where a landlord is found to have failed to comply and permit an award of up to three times the deposit where a finding of breach is made. The Tribunal did not consider that the

circumstances of the case merited an award at the higher end of the scale. It accepted that there had been no malicious intent on the part of the Respondent, the breach had been remedied as soon as it had been realised and the Applicant now had the appropriate access to the deposit scheme to reclaim his deposit. Therefore balancing the competing factors in the particular facts and circumstances, the Tribunal considered that a sanction in the sum of £250 would be appropriate.

- 31 The Tribunal therefore made an order against the Respondents in the sum of £250.

### **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.**

# R. O'Hare

1 September 2020

---

**Legal Member/Chair**

---

**Date**