



**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/21/1530**

**Re: Property at 17 Bridge Park, Rothesay, Isle of Bute, PA20 0HF (“the Property”)**

**Parties:**

**Mr Garry Macqueen, Mr Grant Neil, [REDACTED]  
[REDACTED] (“the Applicants”)**

**Mrs Rachel Clark, The Bield, Pitcairngreen, Perth, PH1 3LT (“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 four hundred and fifty pounds (£450) against the Respondent in favour of the first named Applicant**

**Background**

- 1 The Applicants applied to the Tribunal under regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”) 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 1<sup>st</sup> September 2021.
- 3 On 18 August 2021 the Respondent contacted the Tribunal by email with written representations. In summary the Respondent stated that she admitted being in breach of the 2011 Regulations. She had been aware of the tenancy deposit

schemes but understood these were voluntary. She confirmed that the deposit had been returned in full, after initially having retained £50 in respect of cleaning required. The new tenant had alerted her to this, as she was unable to visit the property herself. She confirmed that she and the first named Applicant had experienced a good relationship up until that point.

- 4 On 18 August 2021, the Tribunal received an email from the first named Applicant in response to the Respondent's representations. He advised that there were issues with mould and mildew at the property, which had been present with the previous tenants. The issues had been highlighted to the Respondent. He pointed out the previous tenants were not in fact the tenants the Respondent had referred to in her representations. He went on to list further issues of disrepair at the property including water damage under the sink, chips in door frames, a lack of hot water and a non-functioning extractor fan. He admitted some mould had been left in the property, but this required specialist cleaning and it was unreasonable to expect tenants to arrange for this. He found it inappropriate that the Respondent took it upon herself to withhold the £50 from the deposit and found it to be neglectful on her part. She should have been aware of the deposit scheme. He felt entitled to compensation.

### **The Case Management Discussion**

- 5 The first Case Management Discussion took place on 1<sup>st</sup> September 2021. The Respondent was present. Neither Applicant was present. The Tribunal therefore determined to adjourn the Case Management Discussion to ascertain whether the Applicants wished to continue with their application.
- 6 The second Case Management Discussion took place on 14 October 2021. The first named Applicant and the Respondent were both present. The second named Applicant was not. The Legal Member noted that the second named Applicant had been forwarded on correspondence by the first named Applicant which included notification of the date and time of the Case Management Discussion and therefore determined to proceed in his absence.
- 7 The Legal Member explained the purpose of the Case Management Discussion and the legal test. She noted that the Respondent accepted she had breached the 2011 Regulations, therefore the issue for the Tribunal to determine was what level of sanction was appropriate having regard to the nature of the breach and circumstances surrounding same. She asked both parties to address her on this issue.
- 8 The first named Applicant confirmed that he had ultimately received the deposit back in full. However he had only achieved that after challenging the Respondent having carried out research into his legal rights and by asking some acquaintances who were experienced in tenancy matters. The money had been held unjustly by the Respondent and it was only by mentioning the tenancy deposit scheme to her that the deposit was returned. This had all transpired in the course of around twenty four hours, however that was only in response to his prompting. It was obvious that the Respondent was withholding the money. The first named Applicant confirmed that his tenancy agreement

stated that the money would be placed into a deposit scheme, however he did not appreciate this at the start of the tenancy as this was his first let. He did not think to ask when he didn't hear anything from a tenancy deposit scheme. He had been naïve in that respect. In terms of the level of sanction, the first named Applicant advised that he was not really qualified to say what would be appropriate, however in his view it should be the maximum amount.

- 9 The Respondent confirmed that the first named Applicant had paid a deposit of £450. On the last day of the tenancy she had transferred him £400. She had withheld £50 for cleaning costs. The Respondent advised that she had not been at the property but had been advised by the new tenants of its condition. It had been a busy day, and the first named Applicant had sent her numerous messages therefore she had decided to transfer the £50 back to him. She had been naïve and did not realise the tenancy agreement had changed to include a requirement to place the deposit in a scheme. When she re-read it, she did see that she should have put the deposit into a tenancy deposit scheme. The Respondent pointed out that the first named Applicant had received his full deposit back, and he had previously thanked her for being a good landlady. She thought they had a good relationship. The Respondent confirmed that the property had been let previously. On the first occasion she had let to friends and did not take a deposit. The property was then let again and deposit was taken from the new tenant. That deposit had not been put into a scheme. She had put the first named Applicant's deposit in the bank and she thought she would be returning it in full, she had not had any issues before, as any tenants had been recommended by people she knew. This was the first instance she had cause to retain sums from the deposit.
- 10 Both parties concluded by commenting on the condition of the property and the circumstances surrounding the withholding of the £50 from the deposit, however the Legal Member pointed out that it was not the role of the Tribunal in the present proceedings to pass judgement on what deductions were or were not due from the deposit.

### **Relevant Legislation**

- 11 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**

- 12 The Applicants and Respondent entered into a tenancy agreement in respect of the property which commenced on 3<sup>rd</sup> August 2020.
- 13 Clause 10 of the said Tenancy Agreement provides for a deposit of £450 to be paid by the Applicants to the Respondent.
- 14 The first named Applicant paid the deposit of £450 to the Respondent at the start of the tenancy.
- 15 The Respondent paid the deposit into a personal bank account.
- 16 The Respondent did not lodge the deposit with a tenancy deposit scheme.
- 17 The Respondent initially returned the sum of £400, having withheld £50 for cleaning costs.

- 18 The first named Applicant challenged the withheld amount and alerted the Respondent to the fact that the deposit had not been lodged in a tenancy deposit scheme.
- 19 The first named Respondent subsequently returned the withheld payment of £50.
- 20 The first named Applicant therefore received his deposit back in full at the end of the tenancy.
- 21 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**

- 22 The Tribunal determined the application having regard to the application paperwork, the written representations from both parties and the evidence heard at the hearing. The Tribunal considered it had sufficient information upon which to make a proper determination of the application.
- 23 As a preliminary point the Tribunal noted that the second named Applicant had not entered the proceedings and had not attended either Case Management Discussion. On that basis the Tribunal concluded that the second named Applicant was not intending on proceeding with the application, and therefore any order granted would be in the name of the first named Applicant only. It did appear from the submissions at the Case Management Discussion that the first named Applicant had been the lead tenant in the case, having been the primary contact with the Respondent throughout.
- 24 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.
- 25 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 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 and had returned the deposit herself when the tenancy ended, following challenge from the first named Applicant. The Tribunal did not consider this breach on the Respondent's part to be deliberate, but a result of her failure to fully acquit herself with the duties that are incumbent on her as a landlord. Upon being advised by the first named Applicant of her obligations in respect of the

tenancy deposit she had returned the deposit in full, therefore the first named Applicant had not suffered any prejudice in that respect.

- 26 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. It would not be unreasonable to have expected the Respondent to familiarise herself with the terms of any tenancy agreement she was entering into and her obligations as a landlord. If she had read the terms of the tenancy agreement, she would have had sight of the clear provisions regarding the safeguarding of the tenancy deposit. The Tribunal noted that she had similarly failed to lodge the deposit in respect of the previous tenancy, where a deposit had been taken and kept in her bank account.
- 27 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 breach arose from ignorance on the Respondent's part, and not deliberate malicious intent, and the deposit had been returned to the first named Applicant in full. Balancing the competing factors in the particular facts and circumstances of this case, the Tribunal considered therefore that a sanction in the sum of £450 would be appropriate, being a sum equivalent to the deposit.
- 28 The Tribunal therefore made an order against the Respondent in the sum of £450.

### **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

14<sup>th</sup> October 2021

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**Legal Member/Chair**

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**Date**