



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Chamber Ref: FTS/HPC/PR/23/0301

Re: Property at 28 Rashiehill Road, Slamannan, Falkirk, FK1 3HL (“the Property”)

Parties:

Mrs Joanne Reid Williams, Mr Lee Williams, 28 Rashiehill Road, Slamannan, Falkirk, FK1 3HL (“the Applicant”)

Mrs Jane Henderson, Mr Mark Henderson, 84 Bruce Drive, Stenhousemuir, Falkirk, FK5 4DE (“the Respondent”)

Tribunal Member:

Karen Kirk (Legal Member)

This Hearing was a Case Management Discussion (hereinafter referred to as a “CMD”) concerning an Application under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (hereinafter referred to as “the Deposit Regulations”). The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained and it was understood a final decision could be made. The hearing took place by teleconference.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that;

- 1. An order for payment of the sum of £750 in terms of Regulation 10(a) of the Regulations should be made by the Respondent’s to the Applicants, and,**
- 2. In terms of Regulation 10(b)(i) of the Regulations orders the Respondents to pay the tenancy deposit to an approved scheme.**

1. Attendance and Representation

The Applicants were both present or unrepresented.

The Respondents were both present and unrepresented.

2. Preliminary Matters

The Applicant Mrs Williams advised that they had missed the last case management discussion as she had suffered a road traffic accident and as the parties have another Tribunal case between them she had got mixed up with the dates. She had informed the Tribunal of this by email after the last case management discussion.

The Respondent Mr Henderson wanted to raise that the Applicants were not to his knowledge living together.

The Respondent's confirmed that they admitted that they had breached the tenancy regulations by not securing the deposit with an approved scheme provider and had not done so from the beginning of the tenancy to present.

There were no other preliminary matters raised by any party.

3. Case Management Discussion

For the Applicants

The Applicant Mr Williams submitted that the deposit of £500 was made at the start of the tenancy in 2019 and he believed when he signed for tenancy it went to a vault and at the end it comes out. He said he understood it was a legal right that the deposit was in the vault. He said as far as they were aware it had not been done.

The Applicant Mrs Williams said she became aware in December 2022 when the initial NTQ was received that the deposit was not secured. She did not raise it until after Christmas. Both Applicants said they did not raise that the deposit was not secured directly with the Respondents as the Respondent Mr Henderson had come to the property in December 2022 and threatened them not to approach or contact the Applicant Mrs Henderson.

The Applicant's said that without the deposit coming back to them it made it harder and without references to move. They said without the deposit being lodged it was 4 years too late and they were worried about the deposit as they depended on it for another tenancy.

For the Respondents

The Respondent Mrs Henderson said at no point would the Applicant's not get the deposit as they would do the minute they walk out the door of the property. She said

the rent had not been paid since November and as such she cannot give references. She said further that after Christmas she became aware the tenancy deposit was not secured. At the time the Respondents had split up and her husband had had a bad accident.

The Respondent Mrs Henderson said she had no other rental properties. She was then unsure as to the number of properties she rented out and the Respondent Mr Henderson corrected her and said she had 6 properties. She agreed to this. They both submitted that this property was the only property that a tenancy deposit had been taken on. The rest of the properties involved benefit income and no deposits were taken.

Mr Henderson, the Respondent said that his wife Mrs Henderson did not understand the deposit scheme and it was a clear oversight on their part. He maintained he had still not lodged the deposit with an approved scheme as he had asked the Tribunal what to do on that front and he had not been informed. He told the Tribunal whatever decision was made he would appeal it. He said that there is ongoing rent arrears for the property of over £3k at present. He explained both he and his wife knew of the situation they agreed they had not paid the deposit into a scheme. They know the situation and they want the decision made so that they can move on to the next tribunal. He said any suggestion he threatened the Applicant was hearsay, made up and irrelevant to the application.

4. Findings in Fact

1. The Application was brought timeously in terms of regulation 9(2) of the Tenancy Deposit Regulations 2011 ("The Regulations").
2. The Applicant's tenancy commenced on 1st February 2019. This tenancy continues.
3. The Tenancy is a Private Residential Tenancy.in terms of the Private Housing (Tenancies) (Scotland) Act 2016.
4. The Private Residential Tenancy between the parties noted that a deposit of £500 was paid by the Applicants to the Respondents. This was a matter of agreement.
5. The deposit of £500 was paid. This was a matter of agreement.
6. The Deposit in terms of the Private Residential Tenancy was to be lodged with the Letting Protection Service Scotland. The Deposit was not lodged with this service and was not lodged with any other approved tenancy deposit scheme. This was a matter of agreement. The deposit remained unprotected and this too was a matter of agreement.
7. In terms of Regulation 10 of the Regulations if the Tribunal is satisfied that the landlord did not comply with any duty detailed in Regulation 3 of the Regulations

then the Tribunal must order a landlord to pay the tenant or tenants an amount not exceeding three times the amount of the tenancy deposit.

8. The Tribunal was satisfied that the Respondents did not register the deposit with a deposit protection scheme as required by Regulation 3. This was accepted by the Respondents at the Case Management Discussion. there was no dispute as to the failure and this was accepted.
9. The Tribunal was also satisfied that a deposit of £500 had been paid by the Applicants to the Respondents at the commencement of the tenancy as per the agreement. This was accepted by the Respondents.
10. The Respondents did not deny that they had not registered the said deposit as required by the Regulations and continued not to do so.
11. As the Tribunal was satisfied a breach of the regulations had occurred the Tribunal had to make an order in terms of Regulation 10.
12. As the Tribunal was satisfied a breach of the regulations had occurred the Tribunal had to make an order in terms of Regulation 10.
13. In terms of Regulation 10 the Tribunal is obliged to make an order up to 3 times the deposit of the applicants to the respondent.
14. The Respondents rent out 6 properties and this was a matter of agreement and put forward by them.

5. Reasons for the Decision.

- a. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the Overriding objective. The Respondent s admitted the breach of the relevant regulations. No dispute as to material facts was raised by either party and no further information was required for the Tribunal to determine the application having regard to the Overriding objective.
- b. The Respondent's were of the view that the deposit was safely secured in a separate account but not a deposit protection scheme and the Applicants would receive same on leaving the property. This was at times contradicted by the Respondents advised parties have ongoing separate cases before the Tribunal for rent arrears and eviction. They maintained it was an oversight and blamed the Tribunal for not having advised them to pay the deposit into an approved scheme when the failure was highlighted to them by the application. They said whilst they rented other properties this was the only property with a deposit.

- c. The Applicant's said they were worried about the deposit and it had been unsecured for 4 years now and was too late.
- d. In terms of Regulation 10 the Tribunal is obliged to make an order up to 3 times the deposit of the applicants to the respondent.
- e. When considering the Order and level of sanction the Tribunal must have regard to the severity of the breach and any mitigating factors.
- f. The deposit was unsecured throughout the tenancy. The Applicants deposit has been and continues to be retained by the Respondents and they do not have the protection or services of a deposit protection scheme at present to engage in arbitration or to receive a return of said monies from the deposit scheme when the Tenancy ends.
- g. In the case of *Jenson v Fappiano* 2015 G.W.D 4-89 in relation to the amount of such an Award under regulation 10 of the Regulations it was noted that a judicial analysis of the nature of the non-compliance was required and a value attached to reflect a sanction which was fair and proportionate and just given the circumstances.
- h. It was further noted that the Sheriff said in said case that the value was not the starting point of three times the deposit minus the mitigating factors it was what was fair and proportionate in the exercise of balanced judicial discretion.
- i. The Court of Session in *Tenzin v Russell* 2015 Hous. L.R 11 held that any payment in terms of Regulation 10 of the Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.
- j. The Tribunal was of the view that an Award should be made in the middle part of the scale as the deposit had been unsecured for the duration of the tenancy from 2019 and this remained the position at the Hearing. There had not been a real practical prejudice to the Applicants as yet as the tenancy continues but the failure was one which has subsisted for some time and has not been rectified. The Tribunal noted whilst the Respondents rented a number of properties they explained this was the only property with a deposit. The explanation given for the continuing breach was one of oversight during a period of difficult circumstances for the Respondents. Accordingly in balancing all the circumstances and after hearing submissions and the evidence of both parties it found the Applicants in its discretion entitled to an award of 1.5 times the deposit to the sum of £750. As the deposit remained unsecured and the tenancy ongoing then the Tribunal also order that in terms of Regulation 10(b)(i) of the regulations the Respondents must pay the tenancy deposit into an approved scheme.

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.

Karen Kirk

19 July 2023

Legal Member/Chair

Date