

Written Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) and Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).

**Chamber reference FTS/HPC/PR/23/0780
Property: 135 Castlehill Road, Ayr, KA7 2LG**

Mr Allan Bell and Mrs Barbara Bell both residing at 39 Hillfoot Road, Ayr, KA7 3LF (“the Applicants”)

Mr Ross Rawley residing sometime at 184 Drayton Park, London and now at 1B Waterfoot Park, Glasgow, G76 0ES (“the First –named Respondent”) and Mrs Nancy Rawley (also known as Agnes Rawley), c/o Mr Ross Rawley, 1B Waterfoot Bank, Glasgow, G76 0ES (“the Second-named Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of both Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), having found that the First-named Respondent did not comply with Regulation 3 of the Regulations, determined that an Order for Payment in the sum of TWO THOUSAND AND EIGHTY FIVE POUNDS (£2,085.00) Sterling be granted.

The Tribunal dismissed the Application against the Second-named Respondent.

Background

1. By application received between 10 March 2023 and 3 April 2023 (“the Application”), the Applicants applied to the Tribunal for an Order in terms of Regulation 10 of the Regulations against the First-named Respondent, Ross Rawley. The Application comprised a copy of a tenancy agreement of the Property between the Applicants and Mr and Mrs J R Rawley with an entry date of 3 February 2018 and copy receipt signed by Mr J R Rawley and Mr Bell of the Applicants confirming payment of a tenancy deposit of £695.00 and the first month’s rent of £695.00 on 3 February 2018. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 1 June 2023 at 14.00 by telephone conference.

2. Prior to the CMD both Parties submitted email correspondence, most of which focused on disputes between them arising from the tenancy and the end of tenancy process.
3. Prior to the CMD, the Chamber Administration provided the Tribunal and the Parties with a copy Title Sheet for the Property showing the owner to be the First-named Respondent, Ross John Rawley, of 184 Drayton Park, London from 19 November 2013 and a copy excerpt from the Landlord Registration Register showing the landlord of the Property also to be Ross John Rawley, of 184 Drayton Park, London as at March 2023.

Case Management Discussion

4. The CMD took place on 1 June 2023 at 14.00 by telephone. The first-named Applicant, Mr. Bell, took part on behalf of both Applicants and the Respondent, Mr Ross Rawley, also took part. Neither was represented.
5. At the CMD, Mr. Bell confirmed that the Application was in respect of the Regulations. Mr. R. Rawley disputed that a deposit had been paid to him and stated that it had been paid to a “third-party” without his consent. Mr. R. Rawley explained that he was the owner of the Property when the tenancy began and that the landlords as stated in the tenancy agreement are his parents, John Ross Rawley and Mrs. Nancy Rawley. He stated that he did not know if a tenancy deposit had been paid and if it had been paid, he had not consented to it or asked for it as he would usually ask for more than the monthly rent. Mr. R. Rawley advised that his father is now deceased and that his mother is still alive and is 84 years old. He advised that since 2019 he has been receiving the monthly rent direct from the Applicants but disputed that he is or was the landlord.
6. Mr. Bell confirmed that a tenancy deposit had been paid as evidenced by the receipt lodged with the Application. He stated that he was not aware that the landlords as shown on the tenancy agreement were both Mr. John Ross Rawley and Mrs. Nancy Rawley as he dealt mainly with Mr. J.R. Rawley, although Mrs. Rawley visited the Property, too. He stated that he knew that Mr. J.R. Rawley was deceased and understood that Mr. R. Rawley had since taken over as landlord.
7. The Parties agreed that no new tenancy agreement had been entered into after the death of Mr. J. R. Rawley.
8. Mr. Bell stated that he had not raised the Application against Mrs. Rawley as he did not know that she was the landlord and did not have an address for her. He stated that he paid rent to Mr. J.R. Rawley’s bank account until he was given a different bank account in 2019 and then paid rent to that account.
9. Mr. R. Rawley disputed that rent had been paid to different accounts but agreed that he took over dealing with the Property in February 2019. He disputed that he had given consent for the tenancy agreement and for the tenancy deposit to be paid. He

maintained that the late Mr. J. R. Rawley had acted as a “third- party” without consent. Mr. R. Rawley agreed that he had acted as landlord after the death of his father but did not accept that he had a responsibility in respect of the Regulations.

10. As there were matters and facts in dispute, the Tribunal advised that the CMD would require to be adjourned to a Hearing of evidence in respect of :
 - i. Was a tenancy deposit paid and, if so, was it paid to the landlord at the time when the tenancy was entered into?
 - ii. If a tenancy deposit was paid, was it lodged with an approved scheme and were the details of the scheme intimated to the Applicants?
 - iii. Was the Respondent, Mr. R. Rawley, the landlord at any point during the tenancy and, in particular, at the end of the tenancy?
11. Also at the CMD, the Tribunal advised Mr. Bell that the Applicants might wish to amend the Application to include Mrs. Nancy Rawley as a Respondent.
12. By email dated 2 June 2023, Mr. Bell of the Applicants requested that the Application be amended to include Mrs. Nancy Rawley and the late Mr. John Rawley as respondents. The Tribunal being satisfied that the first-named Applicant became aware that Mrs. Nancy Rawley ought to have been a party to the Application since the start of the proceedings, made an Order in terms of Rule 32(1)(b) of the Rules that the said Mrs. Nancy Rawley care of her son, Mr. Ross Rawley, 184 Drayton Park, London be added as Second Respondent. The late Mr. John Rawley, being deceased and there being no information in respect of his executory estate, the Tribunal made no Order in respect of the addition of the late Mr. John Rawley.
13. A Hearing was fixed for 11 August 2023 but cancelled as the Application was not served on the Respondents. A fresh Hearing was fixed for 2 November 2023 at 10.00 by telephone and intimated to the Parties, and, in particular, served on the Respondents by Sheriff Officer.
14. Prior to the Hearing both Parties submitted written submissions by email correspondence.

Hearing

Evidence of the Applicants.

15. The CMD took place on 2 November 2023 by telephone. The first-named Applicant, Mr. Bell, took part on behalf of both Applicants. Neither Respondent took part nor were they represented. The Tribunal was satisfied that both Respondents were aware of the Hearing and so proceeded in their absence.
16. Mr. Bell gave evidence by way of making a statement and answering the Tribunal's questions.
17. Mr. Bell stated that he and Mrs. Bell had entered into a tenancy agreement of the Property with Mr. and Mrs. J R Rawley on 3 February 2018. He advised that they

found out about the Property as it had been handled by estate agents and that they had been shown around the Property by Mr. and Mrs. J.R. Rawley. Mr. Bell stated that the estate agents withdrew from acting as the Property was not “up to standard” and that Mr. J.R. Rawley offered to lease the Property to the Applicants privately. He stated that the tenancy agreement was then signed and the deposit of £695.00 and the first month’s rent, also £695.00, was paid in cash.

18. Mr. Bell stated that he and his wife considered that Mr. J. R. Rawley and Mrs. Rawley, whom he knew as Nancy, to be the landlords. He stated that both Mr. and Mrs. J. R. Rawley carried out inspection visits to the Property. He explained that he negotiated a “rent holiday” with Mr. J.R. Rawley during the Covid lockdown.
19. Mr. Bell stated that rent had always been paid cash by bank transfer. Mr. Bell stated that the First-named Respondent, Mr. Ross Rawley, became involved in 2020 when the Applicants were asked to change bank transfers to him direct. Thereafter, the Applicants dealt with Mr. Ross Rawley alone. Mr. Bell stated that he had no dealings direct with Mrs. Rawley on her own. Mr. Bell stated that at the end of 2022, he was advised that Mr. J.R. Rawley had died. Mr. Bell stated that Mr. Ross Rawley contacted the Applicants around that time and advised that he intended to increase the rent to £750.00 per month, and, that Mr. Ross Rawley later advised the Applicants that the Property was to be sold and that, if the Applicants wished, they could remain in the Property at a reduced rent until the sale took place. Mr. Bell explained that he and his wife considered this but thought it too precarious and so they found alternative accommodation and gave notice to leave the Property by email dated 23 January 2023.
20. In answer to questions from the Tribunal, Mr. Bell stated that the only tenancy agreement was the one lodged as part of the Application. He stated that he and his wife had never been given a private residential tenancy agreement or any tenancy information and that they had not been advised who held the tenancy deposit or on what basis. He stated that he had not received a Notice to Leave to end the tenancy.
21. The Tribunal adjourned for Mr. Bell to ascertain the exact date on which the rent payments began to be made to Mr. Ross Rawley. Mr. Bell confirmed that the date was 2 July 2020.
22. In answer to questions from the Tribunal and with reference to his email submission dated 31 May 2023, Mr. Bell confirmed that this email sets out the history of the tenancy and that, at a visit by all three Rawley family members, Mr J.R. Rawley had a private discussion with him in respect of the “rent holiday” being given in exchange for the Applicants purchasing white goods and replacing the boiler.
23. In answer to questions from the Tribunal and again with reference to his email submission dated 31 May 2023, Mr. Bell stated that as far as he knew, the Property had been tenanted previously by two elderly ladies and Mr. J.R. Rawley had carried out gardening at the Property for them. Mr. Bell described Mr. J. R.

Rawley and Mrs. Rawley as elderly and said that Mr. J.R. Rawley told him that he was a retired post-master.

24. In answer to questions from the Tribunal, Mr. Bell stated that he considered Mr. and Mrs. J. R. Rawley to be the landlords until Mr. Ross Rawley became involved and the rent was paid direct to him. He stated that, after that point, the Applicants had no dealings with Mr. and Mrs. J. R. Rawley.
25. The Tribunal explained the broad terms of the law of agency to Mr. Bell and asked if he considered that anyone had acted as an agent for anyone else. Mr. Bell fairly said that he had no real knowledge of agency but thought that it appeared that Mr. J. R. Rawley had acted for Mr. Ross Rawley until Mr. Ross Rawley took over.
26. With regard to the Regulations, Mr. Bell stated that the Applicants had not been aware of the Regulations or any tenancy deposit scheme until after the end of the tenancy when they sought to have return of the deposit.
27. With regard to the amount of an Order, if the Tribunal found in his favour, Mr. Bell stated that he sought an amount equivalent to the return of his deposit but would leave the sum to the Tribunal to determine.

Evidence of the Respondents.

28. As the Respondents were absent from the Hearing, the Tribunal relied on the written submissions by way of the various emails lodged by the First-named Respondent.
29. The Second-named Respondent did not lodge any written submissions.
30. In his emails, Mr. Ross Rawley displays knowledge of the tenancy with reference to repairs, rent being paid in advance and the clear- up which took place at the end of the tenancy, although he qualifies and explains this by saying that he lived with his father before the death of the latter and so was aware of matters regarding the tenancy. Throughout his submissions, he denies being the landlord. He refers to his late father as the “former owner” and a “third party”.
31. The emails of 16 and 25 May 2023, refer to payment of rent and one month’s advance rent at the beginning of the tenancy. The email of 31 May 2023 states *“Whatever deposit he paid was paid to the former owner of the property. Mr John Rawley. There is no financial trail saying this was paid to me.”* Again on 31 May 2023, he writes *“As you can see from receipt of skip hire, we waited 6 weeks for mr bell to have chair removed. He’s lied about this too. He’s lied about the many other items that required skip hire. He’s lied that my father was happy with chimney. He’s weirdly misguided that paying rent in advance precludes him for paying last months rent (He even admits this himself) Nonetheless - he’s now claiming me for a deposit that he gave to a 3rd parry”* Mr. Ross Rawley’s email of 17 May 2023, provides invoices from contractors.

32. By email dated 29 May 2023, Mr. Ross Rawley lodges a screen shot of an account in his name with the Tenancy Deposit Scheme which he states shows that no deposit was paid by the Applicants. The screen shot does not disclose any individual deposit details.
33. By further email dated 29 May 2023, Mr. Ross Rawley writes *“My father owned the house when Mr Bell moved in 2018. If Mr Bell paid my father a deposit - I have no knowledge of this. I certainly never received or even discussed a deposit with Mr Bell. I took him on a trust basis. It’s strikes me that if Me Bell has paid a deposit, it’s to a 3rd party. Now deceased. No deposit was ever paid directly to me and I don’t understand why he think he paid this to me.”*
34. Mr. Ross Rawley’s email of 8 June 2023 and later emails state that he does not know Nancy Rawley, although at the CMD he referred to Nancy Rawley as his mother.

Assessment of the Evidence

35. The Tribunal found Mr. Bell to be straightforward and truthful and that he did not seek to exaggerate his position, nor did he seek to discredit Mr. Ross Rawley other than to stress that he disputed Mr. Ross Rawley’s version of events in respect of the deposit. He spoke well of Mr. and Mrs. J. R. Rawley, and it was clear to the Tribunal that, although Mrs. Rawley was a signatory to the tenancy agreement, she took no active part in the management of the tenancy.
36. In respect of evidence by the first-named Respondent, Mr. Ross Rawley, the Tribunal had only his emails on which to rely. The Tribunal treated these as written submissions. The Tribunal found these written submissions to be contradictory both in respect of content and in respect of Mr. Ross Rawley’s statements at the CMD and factually incorrect in respect of the ownership of the Property.
37. From the evidence as a whole, the Tribunal took the view that, on the balance of probabilities, Mr. Ross Rawley was the landlord throughout the tenancy and his father, the late Mr. J. R. Rawley, acted as his agent, the agency relationship being undisclosed until Mr. Ross Rawley acted on his own behalf in or around July 2020.
38. The Tribunal found that there was no evidence that the second-named Respondent, Mrs. Nancy Rawley, was a landlord or was an active agent for the landlord.

Findings in Fact and Law

1. From the Application, the written submissions and the Hearing, the Tribunal made the following findings in fact: -
 - i) There had been a tenancy of the Property between the Applicants and the first-named Respondent, Mr. Ross Rawley, with an entry date of 3 February 2018 at a monthly rent of £695.00;
 - ii) The tenancy agreement, although not in the proper statutory format, was a private residential tenancy;

- iii) Mr Ross Rawley was named as the owner of the property on the Title Information Sheet: AYR 49098 since 19 November 2013;
- iv) Mr Ross Rawley was named as the registered landlord of the property on the Scottish Landlord Register;
- v) The tenancy agreement was signed by the Applicants as tenants and Mr. and Mrs. J. R. Rawley as agents for an undisclosed principal;
- vi) The undisclosed principal was the first-named Respondent, Mr. Ross Rawley;
- vii) The Applicants paid a tenancy deposit of £695.00 and the first month's rent of £695.00 to Mr. J. R. Rawley on 3 February 2018;
- viii) The tenancy deposit was not lodged with an approved scheme and no information on the deposit was provided to the Applicants by Mr. J. R. Rawley as agent for his undisclosed principal;
- ix) Rent was paid by the Applicants to Mr. J. R. Rawley as agent for his undisclosed principal until July 2020;
- x) Mr. J. R. Rawley managed the Property as agent for his undisclosed principal until July 2020;
- xi) The second-named Respondent, Mrs. Nancy Rawley, took no active part as agent for the first-named Respondent, Mr. Ross Rawley;
- xii) From 3 July 2020, rent was paid to the first-named Respondent, Mr. Ross Rawley, as principal;
- xiii) From 3 July 2020, the agency dissolved or ended and the first-named Respondent, Mr. Ross Rawley, acted as landlord on his own account;
- xiv) The tenancy deposit was not lodged with an approved scheme and no information on the deposit was provided to the Applicants by the first-named Respondent, Mr. Ross Rawley;
- xv) The first-named Respondent, Mr. Ross Rawley, was in breach of Regulation 3 of the Regulations.

Decision

2. Having made those findings, the Tribunal had regard to Regulation 10(a) of the Regulations which states that, if satisfied that the landlord did not comply with any duty in Regulation 3 the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. The Tribunal considered the breach of Regulation 3 by the first-named Respondent, Mr. Ross Rawley, to be significant and at the extreme end of the penalty scale. The Tribunal proposed that the maximum amount be awarded to the Applicants. Accordingly, the Tribunal made an Order for Payment in the sum of £2,085.00.
3. The Tribunal dismissed the Application against the second-named Respondent, Mrs. Nancy Rawley.

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

2 November 2023
Date