



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under The Tenancy Deposit Schemes (Scotland) Regulations 2011 and Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/PR/23/2683

Re: Property at 1/3, 5 Granton Court, Glasgow, G5 0DJ (“the Property”)

Parties:

Miss Xingyue Zhang, 7/7 Castle Wynd South, Edinburgh, EH1 2JT (“the Applicant”)

Mr Zhanyu Jin, 25 Murchison, Glasgow, G12 0FA (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the sum of £500 should be made by the Respondent to the Applicant.

Background

1. The application submitted on 8 August 2023 sought a payment order against the Respondent in respect of the Respondent’s alleged failure to carry out his duties in respect of a tenancy deposit, in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Tenancy Deposit Scheme Regulations”). Supporting documentation was submitted with said application, including a copy of the tenancy agreement between the parties in respect of the Property which had commenced on 1 January 2023. The application claimed that the tenancy deposit paid by the Applicant at the outset of the tenancy was £700 and that the tenancy ended on 5 June 2023. The Applicant claimed that she had to wait 2 months to get back her partial deposit from the Respondent

and that she received the sum of £469.65 on 5 August 2023. The Applicant claimed that the Respondent had made deductions from the deposit to cover outstanding utility bills but delayed producing verification of the deductions made. The Applicant requested details of the tenancy deposit scheme where the deposit was lodged to no avail and it is her understanding that the deposit was not placed in a scheme. She requested in the application the maximum compensation of three times the tenancy deposit, amounting to £2,100.

2. Following initial procedure, on 10 August 2023, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. A Case Management Discussion (“CMD”) was fixed to take place on 10 October 2023. The application had originally been made against both Mr Zhanyu Jin and Mrs Liyan Zhao (Mr Jin’s mother) as Respondents and both had been notified of the application by Sheriff Officer and invited to lodge representations by 20 September 2023. Numerous written representations and documents were lodged prior to the CMD by the Respondent, Mr Jin, and also by the Applicant. Mrs Zhao, (at that stage 2nd Respondent) also lodged representations just before the CMD. Some of the Applicant’s representations were not circulated by the Tribunal to the Respondent as they contained a document written in Mandarin, without an English translation, and also appeared to contain sensitive personal information in relation to a third party, a Miss Li. Some of the Respondents’ representations had been lodged too late to be circulated to the Applicant prior to the CMD and also appeared to contain sensitive personal (medical) information of Mr Jin. The Applicant and the Respondent had both submitted copies of ‘We Chat’ messages in Mandarin, together with their own English translations of same and both appeared to be alleging that the other’s translations were inaccurate and changed the meaning of the messages produced. The Applicant had also sought authority to lodge a voice message recording which she advised was in Mandarin so that the Tribunal could hear this at the CMD. However, it had been explained that this would not be heard at the CMD stage and that arrangements could be made for it to be lodged in advance of any Evidential Hearing to be fixed.
4. From the representations lodged, the Respondent’s position in relation to the application appeared to be that it was not disputed that the sum of £700 was paid by the Applicant but that this was not paid as a tenancy deposit but rather a pre-payment to cover the Applicant’s share of utility bills which would be incurred in the course of the tenancy. As it was not a deposit, it was not paid into a tenancy deposit scheme as there was no requirement to do so. In addition, the Applicant’s payment of £700 was not made to the Respondent but, rather, to Miss Li, the third party mentioned above, who shared the property with the Applicant and had a separate tenancy with the Respondent.
5. The CMD took place by telephone conference call on 10 October 2023 at 10am. It was attended by the Applicant, Miss Zhang, and both Respondents (at that time), Mr Jin and Mrs Zhao. Mrs Zhao had requested a Mandarin interpreter at the CMD but the request had been received too late to allow this to be arranged.

Mr Jin indicated that he could translate for Mrs Zhao, for the purposes of the CMD, if necessary, and it was noted that Mrs Zhao did have some English. Accordingly, the CMD was able to proceed. The Applicant requested to amend the application at the CMD to remove Mrs Zhao as a Respondent, on the basis that the Legal Member had noted that the tenancy agreement only had Mr Jin named as landlord and had explained that this type of application can only be brought against a landlord. The Applicant's explanation for including Mrs Zhao was that it had been Mrs Zhao that she had primarily dealt with. It appeared from discussions at the CMD that Mrs Zhao had been acting almost as Mr Jin's informal agent in respect of the tenancy. The Legal Member accepted the request to amend and confirmed the application would now proceed against Mr Jin alone, although it was explained that Mr Jin could have Mrs Zhao as a witness on his behalf at any Evidential Hearing. The points agreed and disputed by parties were noted. The outcome of the CMD was that the Legal Member determined that the application be adjourned to an Evidential Hearing to take place in-person and that a Mandarin Interpreter would be arranged by the Tribunal to assist parties and witnesses at the hearing. Reference is made to the Notes on the CMD dated 10 October 2023, circulated to parties following the CMD. A Direction was also issued to parties, with requirements for the lodging of witness details and any documentation prior to the Evidential Hearing.

6. In advance of the Evidential Hearing, further representations were received from both parties. The Applicant had lodged a document in Mandarin, indicating that it was a receipt from Mrs Zhao for the deposit paid by the Applicant, which she requested be translated. The Tribunal arranged for this to be translated by Global Connects and the translated version was circulated to parties on 3 November 2023. The Respondent attempted to lodge video evidence prior to the hearing but this was not successful, due to an issue with the format of same. He was advised to bring it to the Evidential Hearing. Neither party complied with the Tribunal's Direction in respect of advising of any witness details in advance, nor lodging their documentary evidence in the manner requested (indexed and numbered).

Evidential Hearing

7. The Evidential Hearing took place in-person at Glasgow Tribunals Centre on 19 January 2024 at 10am. It was attended by the Applicant and Respondent. A Mandarin Interpreter, Ms Xinhui Lai, was present throughout and assisted with translation where required in respect of the oral proceedings and also in translating some documents and voicemail evidence. The Applicant indicated that she did not have any witnesses. The Respondent intended to have his mother, Mrs Zhao, give evidence on his behalf and he was informed that, in that case, his witness could not also be present during the whole Evidential Hearing, either as his representative or in a supportive capacity. He confirmed that she would be his witness. Both parties had indicated previously that they may have Miss Yaqing Li as their witness but both stated that she was not attending today to give evidence for either of them. The Applicant indicated that she had voicemail messages from Miss Li on her mobile phone which she

wished to play during the hearing. The Respondent also confirmed that he had the video evidence he wished to show the Tribunal on his mobile phone, which he stated was evidence concerning the tenancy agreement entered into between the parties.

8. The Legal Member made introductory comments, explained the procedure, referred to the previous CMD and the Notes of that. She summarised the facts that the parties appeared to be agreed upon and both parties confirmed that agreed facts were as follows:-

- the dates of the tenancy were from 1 January 2023 until 5 June 2023;
- the rent was £700 per calendar month, with 6 months' rent, totalling £4,200 paid in advance by the Applicant at the outset of the tenancy;
- over and above the rental payment of £4,200, the Applicant was asked to pay the additional sum of £700 and that she did so;
- after the tenancy had ended, a partial refund of the £700 paid was made to the Applicant, amounting to £469.65, on 5 August 2023.

The Legal Member indicated that it was only the issues which were in dispute that the Tribunal required to hear evidence on and both parties agreed that the main issue in dispute is that Applicant maintains that the £700 paid was a deposit and should therefore have been paid into a tenancy deposit scheme as required by law and protected; whereas the Respondent maintains that the £700 was not a deposit, but a pre-payment of utility bills, that it did not therefore require to be paid into a scheme and that the Respondent was not in breach of the Tenancy Deposit Regulations.

9. Evidence of the Applicant

Miss Xingyue Zhang, the Applicant, confirmed her address remains as above, that she is 27 years old and works as a restaurant manager. Miss Zhang stated that the £700 paid by her was a deposit and that it should have been protected in a tenancy deposit scheme and protected as this is Scottish Law. Mr Jin knows this but is instead saying the £700 was a pre-payment. She thinks this was a cunning strategy by Mr Jin and is very annoyed at how she was treated.

Reference was made to her bank statements produced and two entries noted. The first entry noted was on 4 December 2022 showing a payment to "Yaqing Li" of £700 for "Rental deposit". The second entry noted was on 19 December 2022 showing a payment of £4,200 to "Liyang Zhao" for "Total rent" which Miss Zhang confirmed was the advance payment of 6 months' rent. She stated that she had paid the £700 to Miss Li who was already a tenant in the Property, at the request of Mrs Zhao. This was after she had seen a video of the Property and was a few weeks before she signed the tenancy agreement. She confirmed that she had not met Miss Li at this point.

Miss Zhang was referred to the copy tenancy agreement she had lodged with the Tribunal and accepted that she had signed this agreement on 19 December 2022. She was referred to Clause 10 of the tenancy agreement which states

that the deposit payable is £0 and Clause 35 – “Additional Tenancy Terms” which contains a separate paragraph headed “Deposit” which states “The landlord will not ask for deposit, the £700.00 paid by tenant in advance will be the pre-payment for the utilities bills, therefore the landlord will not store it to third party. It will be used to cover the tenant’s monthly usage of Gas, Electricity, Internet, and Property Management Fee.” Miss Zhang stated that she paid the £700 before signing the tenancy agreement and she thinks the additional clauses were added after she had read through a previous version of the agreement. Miss Zhang stated that she had subsequently given notice to end the tenancy as at 5 June 2023 and had requested her deposit back. Reference was made to the notice document lodged with the Tribunal dated 15 May 2023 from the Applicant to the Respondent. Miss Zhang confirmed that the tenancy did end on 5 June 2023 and that, as she was aware that she was ending the tenancy at slightly short notice, she was not expecting to get any refund of the rent already paid to cover June 2023. However, despite having given the Respondent plenty notice, she had to wait two months to get back any of her £700 deposit. She was eventually refunded the sum of £469.65 on 5 August 2023.

Reference was then made to the receipt lodged by the Applicant which she said was from Mrs Zhao. It had been translated independently by Global Connects, at the request of the Tribunal and was translated as follows:-

“Receipt

Received £700 from Xing Yue Zhang today as the rent deposit. In the event of Xing Yue Zhang breaches the contract, the £700.00 will not be returned.

[signed] Li Yan Zhao

4th December 2022”

Miss Zhang confirmed that she agreed with that interpretation. Mr Jin confirmed that this document had been signed by his mother, Mrs Zhao, but disagreed with the interpretation, stating that the word translated as “deposit” could also be interpreted as “booking fee”. Ms Lai, the Interpreter at the Evidential Hearing was asked if she would translate the relevant term in the document and she stated that it could be interpreted as “rental reservation/deposit”. Mr Jin discussed his interpretation with the Interpreter and she explained that he had stated that it was like a pledge that compensation would be paid, a reservation to keep the space and that if the lease was not proceeded with the money would be returned. The Interpreter stated that she stood by her original interpretation. Ms Zhang was asked what Mrs Zhao had verbally said the payment of £700 was for and she replied that she had said it was a deposit. It was noted that the date on the receipt, 4 December 2022, tied up with the entry in Miss Zhang’s bank statement for the payment of the £700 to Miss Li.

Miss Zhang then played the voicemail message on her mobile phone which she stated was from Miss Li and was received by her on 21 September 2023 at 18.16 hours via ‘We Chat’. Miss Lai, the Interpreter, translated the message as follows:-

“I know I will not produce fake evidence. I will tell the truth to the Sheriff what the purpose of the money is for. When you made the transfer it clearly shows that this is a deposit. If judge asks me I’ll say this is a deposit. I don’t know how you communicated with the landlord but when I received it it’s deposit.”

Mr Jin confirmed that he accepted this was a message from Miss Li as he recognised her voice. However, he wishes to raise some questions with the Applicant over this evidence. He stated that he had noted the time Miss Zhang had said that this message was left and that Miss Li had contacted him just after this, at 6.30pm. According to Mr Jin, Miss Li also had discussions with him after this, in October 2023, when she said that she did not know about the legal dispute when she had left the message in September and had been tricked into saying this by Miss Zhang. Miss Zhang had told her that if Miss Li supported her in this dispute, they would share any compensation awarded. Mr Jin said that Miss Li had refused to come as a witness to the Evidential Hearing but had provided him with a copy of her passport to lodge with the Tribunal to confirm this. Miss Zhang stated that she disputed this and that, during the tenancy and afterwards, Miss Li had encouraged her to report Mr Jin. As to Miss Zhang’s previous stated intention to have Miss Li as a witness on her behalf at the Evidential Hearing, Miss Zhang explained that she is no longer in contact with Miss Li.

Miss Zhang was then asked about her signing of the tenancy agreement and the clauses that appear therein regarding the £700 payment. She was also asked about Mr Jin’s position that she was asked to read the tenancy agreement carefully and that she has video evidence verifying these matters. Miss Zhang maintained that she was asked to pay a deposit of £700, which she did and that this was a few weeks before she signed the contract. She thinks Mr Jin has made an adjustment to the contract which he is trying to use to get out of complying with Scottish law regarding deposits. She conceded that she had signed the tenancy agreement containing these clauses but explained that she had not noticed these clauses, which she thinks had been added to the version she signed after she had previously been issued with a standard Private Residential Tenancy Agreement to look through. Miss Zhang further explained that, before paying the money over, she had initially been issued with a lease agreement in Mandarin which she had refused to accept as a number of the clauses were unfair to tenants. Mr Jin stated that he does not know anything about this, as it was his mother, Mrs Zhao, who had been dealing with matters at that time, on his behalf. Miss Zhang stated that she had asked for a PRT agreement, in English, and that Mrs Zhao had thereafter supplied a standard PRT agreement which Miss Zhang said she had read through carefully and thought it was in order. On this basis, she agreed to pay the £700 over. When it came to signing the tenancy agreement a few weeks later, she was sent the current version for signing. She explained that she had assumed that she was signing up to a standard PRT ie. without these additional clauses.

Miss Zhang then spoke about the end of the tenancy. Reference was again made to her having notified the Applicant in writing on 15 May 23 of her intention

to leave earlier than expected, on 5 June 2023, and that she had made it clear that she was not therefore requesting any of the rent that she had pre-paid back. However, she had requested in that written notice the return of her £700 deposit, within 3 days of vacating the Property. However, after vacating, she had to wait 2 months to get any of her deposit back, eventually receiving the sum of £469.65 back on 5 August 2023. Miss Zhang confirmed that there was communication by email between the parties between these dates about her request for return of the deposit and reference was made to the emails she had lodged with her application to the Tribunal in this regard. Mr Jin commented that he had referred to the £700 in these emails as a “pre-payment” and that he had explained in the emails regarding the delay that he had been in China for a period and was having to await/calculate figures for the utilities bills incurred by Miss Zhang during the tenancy, so that these could be deducted from the £700.

Miss Zhang was asked to make any comments she wished to regarding the appropriate sanction to be imposed on the Respondent should the Tribunal find that he had been in breach of the Tenancy deposit Regulations. Miss Zhang stated that, although she had claimed the maximum penalty (£2,100) in her application, that it was not really about the money. She simply wished for a proper apology and an admission that Mr Jin had not dealt with the matter properly. She is annoyed that she has still not had this apology and the time and effort this process has taken. She thinks she was very patient as to the time she waited to get a refund from Mr Jin and that he has not been transparent through the whole Tribunal process. She confirmed that she did not suffer any significant financial difficulties as a consequence of the deposit not being placed in a scheme or the delay in getting the part-payment back. She is content to leave it to the Tribunal to assess the fair sanction to be imposed, if the tribunal considers there has been a breach.

Miss Zhang did not wish to add anything in summing up, other than to say that the only issue here is really the definition of a deposit.

Evidence of the Respondent

10. Mr Zhanyu Jin confirmed that he is still at the address above, is 27 years old and is not currently working. He advised that he had required to stop a university course, due to some mental health problems. He confirmed that this is his only rented property and that neither he, nor his mother, currently rent out any other properties.

Mr Jin summarised his position in relation to this application. The payment of £700 made by the Applicant was not a deposit. This is clear in the tenancy contract which Miss Zhang signed. He denies that these clauses were added and thinks that Miss Zhang simply did not read the contract properly. His mother issued Miss Zhang a receipt for the £700 and he maintains that the receipt document translated earlier refers to the £700 as a “reservation fee”. As the contract subsequently went ahead, the £700 then became a “pre-payment fee”, as stated in the contract which was signed 3 weeks later. Mr Jin does not

consider there was any misunderstanding between the parties as to what the payment of £700 was for. The contract makes it clear that the £700 would not be placed within a third party scheme as it was not a deposit. Mr Jin then made the point that the £700 paid by Miss Zhang was not paid into either his, nor his mother's bank account, so they did not have control of it. Miss Zhang was given the option of paying the £700 to Miss Li, who was already a tenant in the Property, as they felt this gave Miss Zhang the reassurance that the money was protected by a third party, which is also the purpose of the tenancy deposit scheme. Mr Jin confirmed that they only received the £700 from Miss Li on 3 March 2023 due to her not wanting to hold it any longer. When asked why he had not paid the money into a tenancy deposit scheme at that point, Mr Jin explained that this was because he did not consider it a deposit. Mr Jin conceded that he was quite inexperienced at the time as a landlord and had only had his Landlord Registration for less than a year. He referred to the Certificate he has lodged with the Tribunal from a tenancy deposit scheme, showing that he has placed the deposit in respect of the subsequent tenancy of the Property in a scheme.

Mr Jin reiterated what he had stated during Miss Zhang's evidence, as narrated above, concerning the delay with refunding Miss Zhang at the end of the tenancy and his explanation for that. Mr Jin also wished to explain the amount ultimately refunded to Miss Zhang but the Tribunal did not consider that relevant. The Legal Member explained that the Tribunal is simply to determine in this type of application whether or not there has been a breach of the Tenancy Deposit Regulations, but that, should the Tribunal be imposing a sanction, his explanation for the timescale in making the partial refund to Miss Zhang would be taken into account.

Mr Jin was asked what he considered a tenancy deposit was for and how this differs from his explanation about the money being a pre-payment to cover any outstanding utility bills at the outset. Mr Jin responded that the distinction was that the payment of £700 was not necessarily to cover bills outstanding at the end of the tenancy, but rather to cover the utility bills being incurred during the tenancy as his practice was to leave the utility bills in his own name and he did not have money to cover these himself.

The Legal Member then referred Mr Jin to the interpretation of the term "tenancy deposit" in the Tenancy Deposit Scheme Regulations which states in the Interpretation section (Regulation 2) that it has the meaning conferred by section 120(1) of the Housing (Scotland) Act 2006.

Section 120(1) states that "*A tenancy deposit is a sum of money held as security for –*

- (a) the performance of any of the occupant's obligations arising under or in connection with a tenancy or an occupancy arrangement, or*
- (b) the discharge of any of the occupant's liabilities which so arise."*

Reference was also made to Scottish Government Guidance on Tenancy Deposits for tenants dated 29 January 2020 which states:-

“When you move into a rented property, most landlords or letting agents will ask you for a deposit.

A deposit is a sum of money which acts as a guarantee against

- damage that you might do to the property*
- cleaning bills if you’ve left the property in poor condition*
- bills that are left unpaid, like fuel or telephone bills*
- unpaid rent”*

Mr Jin was shown extracts of the above and given an opportunity to read them through and offered the assistance of the interpreter, but he indicated that this was not required. He understands that a deposit is there to cover the situation where the tenant does not pay for damage or for bills outstanding. He stated that he had misunderstood the position and that, if this is the Tribunal’s interpretation of what the £700 sum was, then he accepts if a penalty has to be imposed. The Legal Member asked Mr Jin if, given that this was his position now, he was content to leave his evidence as it was, as it appeared that there was no purpose in the Tribunal hearing further evidence either from Mr Jin himself, or from his mother. Mr Jin confirmed this was his position.

Further Procedure

11. The Tribunal adjourned to consider the matter and determined that the £700 paid by the Applicant had been a deposit and that, as it had not been placed in a tenancy deposit scheme by the Respondent, he was in breach of the Tenancy Deposit Regulations and that a sanction must be imposed. During the adjournment, there were discussions between the Respondent, his mother and the Tribunal Clerk concerning the wish of the Respondent’s mother to still give evidence. The Tribunal decided that this was not appropriate in the circumstances but indicated that the Respondent’s mother could accompany him in a supportive capacity for the remainder of the hearing, which she did.
12. On re-convening, the situation was explained to Mr Jin and his mother, Mrs Zhao, and Mr Jin confirmed that he had conceded that no further evidence was required. The Legal Member explained that the Tribunal was satisfied that there is a clear definition of a deposit in the legislation; that one of the stated purposes of a deposit in the legislation and Scottish Government guidance is to cover tenancy obligations, such as utility bills, which the tenant has incurred but not paid; and that, in the Tribunal’s view, calling the payment something else made no difference to the fact that it had all the features of a deposit. As the Tribunal was satisfied that the £700 paid by the Applicant here was a deposit, it should have been placed in a tenancy deposit scheme. As it hadn’t been placed in a scheme, the Respondent was in clear breach of the Tenancy Deposit Regulations.
13. Mr Jin was then asked to make any comments he wished to make as to the appropriate level of sanction for the Tribunal to impose. Mr Jin stated that he has no income, other than the rent from this Property and he hoped that the Tribunal would not impose anything like the £2,100 maximum. He wished to

apologise to Miss Zhang for any financial or emotional stress that had been caused to her. Although she had stated that he had not apologised, he stated that he had repeatedly apologised. Miss Zhang had also said his attitude was bad but he wanted to stress that he has changed his behaviour and now uses a tenancy deposit scheme and the standard tenancy agreement. He has not had any previous Tribunal findings against him for breach of the Tenancy Deposit Regulations. He confirmed that he is still taking anti-depressants and sees his GP every few weeks in connection with his mental health.

14. Miss Zhang had already addressed the issue of sanction in her evidence earlier but wished to add that she is sorry that the situation had to come to this but felt that there are many pressures on the younger generations and that she felt she was taken advantage of. Mr Jin had a bad attitude and it was because of this that she came to the Tribunal. The process has cost her time and mental energy. She appreciates that Mr Jin has his own financial restrictions but hopes that he will be more careful in future.
15. The Legal Member confirmed that the Evidential Hearing was now concluded and the Tribunal Members would thereafter consider the appropriate level of sanction to be imposed and issue their Decision in writing in due course. Parties were thanked for their attendance and the Evidential Hearing brought to a close.

Findings in Fact

1. The Respondent is the owner and landlord of the Property.
2. The Applicant was the tenant of the Property by virtue of a Private Residential Tenancy commencing on 1 January 2023, which ended on 5 June 2023.
3. The Applicant paid the sum of £700 to a third party at the request of the Respondent on 4 December 2022, prior to signing the tenancy agreement on 19 December 2022 and prior to the commencement of the tenancy.
4. The Respondent's mother, acting as the Respondent's agent, provided the Applicant with a signed receipt for the £700 dated 4 December 2022.
5. The sum of £700 was subsequently transferred by the third party to the Respondent on or around 3 March 2023.
6. The Respondent did not pay the sum of £700 into a tenancy deposit scheme.
7. The Applicant gave notice in writing to the Respondent on 15 May 2023 that she would be vacating on 5 June 2023 and requested return of the deposit of £700 within 3 days of the end of the tenancy.
8. The Respondent refunded the sum of £469.65 to the Applicant on 5 August 2023, having deducted the balance of the utility bills he calculated she owed.

9. The Respondent denied that the £700 was a deposit.
10. The tenancy agreement standard "Deposit" clause stated that the deposit payable was zero.
11. An additional clause was added to the tenancy agreement stating that the £700 payable by the tenant was not a deposit and would therefore not be lodged in a tenancy deposit scheme.
12. The additional clause in the tenancy agreement stated that the £700 was in respect of pre-payment of utility bills.

Reasons for Decision

1. The Tribunal was satisfied that the application was in order and had been submitted timeously to the Tribunal in terms of Regulation 9(2) of the Tenancy Deposit Regulations [as amended to bring these matters within the jurisdiction of the Tribunal], the relevant sections of which are as follows:-

"9.—(1) A tenant who has paid a tenancy deposit may apply to the sheriff 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."

Regulation 3 [duties] referred to above, is 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.”

Regulation 42 [landlord's duty to provide information to tenant] referred to above, is as follows:-

“42.—(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).

(2) The information is—

(a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;

(b) the date on which the tenancy deposit was paid to the scheme administrator;

(c) the address of the property to which the tenancy deposit relates;

(d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;

(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and

(f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.

(3) The information in paragraph (2) must be provided—

(a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or

(b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.”

2. The Tribunal was satisfied from the documentation before it and the evidence heard from both the Applicant and Respondent at the Evidential Hearing that the £700 paid by the Applicant prior to the commencement of the tenancy was a deposit. Although the Respondent had maintained his position throughout the Tribunal process that the £700 was not a deposit, referring to it as a “reservation fee”, a “booking fee” or a “pre-payment for utility bills”, it was clear to the Tribunal that the £700 paid had all of the features of a deposit, in terms of the definition of same in the legislation, and had, in fact, been a deposit. The Tribunal did not consider that the fact that the tenancy agreement described the payment as something other than a deposit, that the sum had originally been paid by the Applicant to a third party at the request of the Respondent nor that the Respondent referred to the £700 as something other than a deposit in his correspondence with the Applicant made any difference. It appeared to the Tribunal that, if it were possible for landlords to escape the requirements of the Tenancy Deposit Regulations simply by claiming that such a payment was not a deposit, this would thwart the whole purpose of the Regulations and the protections afforded to tenants in these circumstances. The Tribunal was satisfied that the Applicant had considered that she was paying a tenancy deposit, given that she had described it as such, at the time it was paid, in the relevant entry in the bank statement she had produced. She had also requested her deposit back some months later, when giving her written notice to end the tenancy. The Tribunal considered the Applicant’s evidence to be consistent and credible in respect of the communications she had had with the Respondent’s mother prior to the commencement of the tenancy and accepted the Applicant’s explanation as to why she paid the £700 to a third party and the background to her signing the tenancy agreement which contained contrary clauses in respect of the £700 paid. The Tribunal also considered the Applicant’s position to be supported by the terms of the written receipt issued to the Applicant by the Respondent’s mother and dated the same date as the entry in the Applicant’s bank statement showing the £700 payment made to the third party. The Tribunal noted that the interpretation of the receipt by the independent interpreter at the Evidential Hearing accorded with that of the independent interpreter instructed by the Tribunal to interpret the receipt in advance of the hearing. Both translations (albeit not accepted by Mr Jin) supported the Applicant’s position that this was a deposit receipt. The Tribunal considered that Mr Jin, assisted by his mother, had attempted to set up the tenancy and the payment of the £700 by the Applicant in such a way as to avoid being caught by the Tenancy Deposit Regulations and to thereby retain control of the £700. However, having heard Mr Jin’s evidence, the Tribunal was prepared to accept that the Respondent had genuinely misunderstood the position, perhaps due to his inexperience as a landlord and lack of knowledge of the relevant law. In any event, later in his evidence, the Respondent had essentially conceded that the payment of £700 made by the Applicant was covered by the definition of “tenancy deposit” in the legislation and agreed that no further evidence accordingly required to be heard on that issue.
3. Having established that the £700 paid was a tenancy deposit and it being admitted by the Respondent that he had not paid it into a tenancy deposit scheme, the Tribunal was satisfied that the Respondent was in breach of the duties outlined in Regulations 3 and 42 above of the Tenancy Deposit Scheme

Regulations, as above. The Tribunal was therefore satisfied, in terms of Regulation 10 above that a sanction must be imposed on the Respondent in respect of this breach of the Regulations.

4. In thereafter determining the appropriate amount of the sanction to be imposed on the Respondent for payment to the Applicant, the Tribunal considered the background circumstances to the matter and the evidence given orally at the Evidential Hearing by both parties. The Tribunal considered that the amount of the sanction should reflect the gravity of the breach. In terms of her application, the Applicant had sought the maximum available sanction but, at the Evidential Hearing, she indicated that she was not really particularly concerned about the money and rather, had been hoping for a genuine apology and admission from the Respondent that he had treated her badly. As the deposit here was £700, in terms of Regulation 10(a) above, the maximum possible sanction is £2,100. There is no minimum sanction stipulated in the Tenancy Deposit Regulations.
5. The Tribunal considered the relatively short period of the tenancy of just over five months and the subsequent period of two months between the end of the tenancy and the Respondent making the partial refund to the Applicant of £469.95. The Tribunal noted that the Applicant did not take issue with the amount that had been retained by the Respondent in respect of outstanding utility bills but had been annoyed at the delay in the Respondent refunding the balance to her. The Tribunal appreciated the Applicant's concern at finding out that the deposit had not been protected in a scheme for the duration of the tenancy and frustration that she could not seek the assistance of a scheme in claiming her deposit back at the end of the tenancy. However, the Tribunal did not consider that the two month period she had to wait was unduly long or necessarily longer than it would have taken through the tenancy scheme procedures. The Applicant did not seek to argue that the Respondent's actions had caused her any financial difficulties. She did, however, refer to the negative impacts on her in terms of time and emotional input in trying to get her deposit back at the end of the tenancy and thereafter, in going through these Tribunal proceedings. As to the Respondent, the Tribunal noted that this was his only let property and his only current source of income. He had explained his inexperience as a landlord at the time and the fact that he had initially relied quite heavily on his mother to manage matters to do with the tenancy on his behalf. In addition to his inexperience, the Respondent had spoken of struggling with depression and his mental health and stated that he had required to give up university as a consequence. As narrated above, the Tribunal considered that the Respondent had been naïve in thinking that, in the particular circumstances, he did not require to put the £700 into a scheme. It was noted that the Respondent had, however, now accepted the position and, indeed, had lodged the subsequent deposit he had received in a scheme and had produced the relevant certificate with the Tribunal as evidence of this. It was also noted that the Respondent apologised to the Applicant at the Evidential Hearing for any emotional or financial stress caused. Weighing all of these factors, the Tribunal determined that the sum of £500 was the appropriate amount of the sanction to be paid by the Respondent to the Applicant.

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

19 January 2024
Date