



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/PR/24/0629

Re: Property at Burnside Bungalow, Balbeggie, Perth, PH2 6AS (“the Property”)

Parties:

**Miss Gillian Hogg, Mr Robert Gourlay, Burnside Bungalow, Balbeggie, Perth,
PH2 6AS (“the Applicant”)**

**MESSRS.I.R.DOUGLAS, 34 Mansionhouse Road, Edinburgh, EH9 2JD (“the
Respondent”)**

Tribunal Members:

Virgil Crawford (Legal Member)

Decision

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

BACKGROUND

1. By lease dated 31 October 2015 the Respondents let the Property to the Applicants.
2. At the commencement of the tenancy deposit of £875.00 was paid to the Respondent by the Applicants.
3. The tenancy deposit was not lodged with an approved scheme until 12 September 2023.

4. The Applicants presented an Application to the Tribunal seeking that a penalty be imposed upon the Respondents for failure to comply with the Tenancy Deposit Schemes (Scotland) Regulations 2011 (the “TDS Regs”).

THE CASE MANAGEMENT DISCUSSION

5. The First Applicant participated personally in the Case Management Discussion. The Second Applicant did not. The Respondent was represented by Mr Douglas, partner of the firm.
6. The Respondent had previously forwarded an email to the Tribunal accepting the deposit had been paid and it had not been lodged with an approved scheme until 12 December 2023, explaining that this was due to an oversight many years ago. Tenancy deposits are generally handled by the firm’s accountants. This particular deposit, however, was not transmitted to the accountants to be lodged.
7. The Respondents lease 7 properties in total, all of them being within the farm grounds at Balbeggie, Perth. They have never before failed to lodge a tenancy deposit.
8. The deposit funds were always available to be lodged and, indeed, were lodged once the error was drawn to the attention of the Respondent. The tenancy is still ongoing.
9. The email Submissions from the Respondent drew attention to alleged rent arrears on the part of the Applicants. The Tribunal advised the Respondent that arrears of rent were not relevant to the issue to be determined by the Tribunal, that being the penalty to being imposed for the failure to comply with the TDS Regs over a lengthy period of time. Mr Douglas on behalf of the Respondent, accepted that.
10. The Tribunal, in all the circumstances, imposed a penalty equivalent to the amount of the tenancy deposit, that being £875.00.

FINDINGS IN FACT

11. The Tribunal found the following facts to be established:-
 - a. By lease dated 31 October 2015 the Respondent let the property to the Applicants.
 - b. A tenancy deposit of £875.00 was paid by the Applicants to the Respondent at the commencement of the tenancy.
 - c. The tenancy deposit was not lodged with an approved scheme until 12 September 2023. The tenancy deposit was, therefore, unprotected for a period of almost 8 years.
 - d. The tenancy is continuing.

- e. The Respondent rent 7 properties in total. The Respondents have never previously failed to lodge a deposit with an approved scheme.

REASONS FOR DECISION

- 12. There was no dispute that the TDS Regs have been breached. Indeed, the breach subsisted for a very lengthy period of time, almost 8 years.
- 13. The tenancy deposit funds, however, were always available. They had not been used or otherwise disbursed by the Respondent. Albeit belatedly, they were lodged with an approved scheme during the currency of the tenancy.
- 14. Having regard to the admission by the Respondent that the TDS regs had been breached, the explanation provided by them, and the other factors referred to above, the Tribunal determined that the main aggravating factor is the period of time during which the funds were not lodged with an approved scheme. Mitigating factors are the admission by the Respondent of the breach, the explanation that this was due to an oversight, the fact the breach was rectified, albeit belatedly, and the fact the breach was rectified during the currency of the tenancy.

DECISION

The Tribunal granted an order against the Respondent for payment of the sum of EIGHT HUNDRED AND SEVENTY FIVE POUNDS (£875.00) STERLING to the Applicants

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.

V. Crawford

17 June 2024

Legal Member/Chair

Date