



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

**Chamber Ref: FTS/HPC/PR/24/2539**

**Re: Property at 108A High Street, Ayr, KA7 1PQ (“the Property”)**

**Parties:**

**Mr Mark McCleary, 4 Drumchapel Close, Glasgow, G15 6AY (“the Applicant”)**

**K&D Ayrshire Ltd, 62 Viewfield Road, Ayr, KA8 8HH (“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 9<sup>th</sup> August 2023 the Respondent let the Property to the Applicant.
2. The start date of the tenancy was 12<sup>th</sup> August 2023.
3. The tenancy ended on 12<sup>th</sup> May 2024.
4. A tenancy deposit of £550.00 was paid by the Applicant to the Respondent. The tenancy deposit was paid on 14<sup>th</sup> August 2023.
5. The tenancy deposit was not lodged with an approved tenancy deposit scheme at any point.
6. The Applicant presented an application to the Tribunal seeking compensation due to the failure of the Respondent to lodge the tenancy deposit with an approved TDS scheme.
7. The application was lodged on 3<sup>rd</sup> June 2024.

## **THE CASE MANAGEMENT DISCUSSION**

8. The Applicant appeared personally at the Case Management Discussion. The Respondent was represented by Mr H Mulgrew, a director of the Respondent.

### **The Respondent**

9. Mr Mulgrew acknowledged that the deposit was received. He accepted it was never lodged with an approved tenancy deposit scheme. He agreed the tenancy ended on 12<sup>th</sup> May 2024. The tenancy deposit was repaid to the Applicant on 3<sup>rd</sup> June 2024.
10. It was accepted by both Parties that, while the deposit was not repaid in full, the deduction from it was agreed between the Parties to cover rental due until the date of termination of the tenancy.
11. Mr Mulgrew explained that he believed the deposit would have been lodged by another director of the company. He explained he ran multiple businesses and was involved in letting property on a commercial, retail and residential basis. The residential letting side, however, had reduced very significantly in recent years. The business previously had approximately 250 residential properties. The number is now in single figures.
12. The company had a financial director. It was the responsibility of the financial director to deal with tenancy deposits and to lodge them timeously. At the time of the lease being entered in to, the financial director was in office. He is a person who was diligent and trusted by Mr Mulgrew to do his work properly. The financial director, however, resigned in December 2023 due to health issues which were disclosed in the course of the Case Management Discussion. It became apparent thereafter that various things the financial director ought to have attended to had not been dealt with properly. The lodging of this deposit was clearly one of those things.
13. Mr Mulgrew explained that it was not until April 2024, when the Applicant intimated an intention to vacate the premises, that he took steps to locate the deposit. He believed, initially, that it had been lodged but could not locate what had been done with it. He attempted to contact the former finance director but received no reply. It then became apparent that it had not, in fact, been lodged with an approved scheme.
14. Upon enquiry by the Tribunal, it became apparent there were no systems in place to check that a tenancy deposit had been lodged with an approved scheme after it had been received. Mr Mulgrew explained also that the finance director had not yet been replaced.
15. Mr Mulgrew highlighted that, once the error had been identified, the deposit was thereafter repaid in a timely fashion, being repaid 22 days following the termination of the tenancy. Had it been lodged with an approved scheme it is unlikely the Applicant would have received repayment so quickly.

## **The Applicant**

16. The Applicant was seeking a payment order in the sum of £1,650.00, being three times the tenancy deposit and the maximum the Tribunal is permitted to impose. His application stated he wished this “as compensation” explaining that due to the failure to lodge the deposit with an approved scheme he “was subject to stress, frustration, anxiety and was uncertain of my financials situation”.
17. The Applicant pointed out that he had messaged Mr Mulgrew on a number of occasions asking where the deposit was. He indicated there were long delays before there was a response. He advised he suffers from anxiety and has other health issues which were affected by the uncertainty created.
18. He pointed out the deposit was not protected at any point and was at risk and he did not know what was happening after he had intimated his intention to terminate the tenancy.
19. While Mr Mulgrew disputed some of what was said by the Applicant, and in particular Mr Mulgrew provided detailed information to suggest that he had replied to messages in a timely fashion, the tribunal pointed out that any payment order granted by it is not made as compensation to the Applicant. The Tenancy Deposit Regulations (Scotland) 2010 are designed to impose a penalty upon landlords who fail to comply with the regulations by lodging a deposit. As a matter of fact, because of the way the regulations are framed, the penalty imposed is paid to tenant or tenants involved. In that regard the tenant – and the Applicant in this case – benefits from the penalty which is imposed on the landlord. That is a different thing from it being compensation for the tenant arising from any loss or distress. Indeed, if the order was to be as compensation for tenants, there are many cases in which there would be no loss.

## **Penalty**

20. The Tribunal determined that the appropriate penalty to impose was an amount equal to the tenancy deposit.

## **FINDINGS IN FACT**

21. The Tribunal found the following facts to be established: -
  - a) By Lease dated 9<sup>th</sup> August 2023 the Respondent let the Property to the Applicant.
  - b) The start date of the tenancy was 12<sup>th</sup> August 2023.
  - c) The tenancy ended on 12<sup>th</sup> May 2024.
  - d) A tenancy deposit of £550.00 was paid by the Applicant to the Respondent. The tenancy deposit was paid on 14<sup>th</sup> August 2023.
  - e) The tenancy deposit was not lodged with an approved tenancy deposit scheme at any point.
  - f) The Applicant presented an application to the Tribunal seeking compensation due to the failure of the Respondent to lodge the tenancy deposit with an approved TDS scheme.

g) The application was lodged on 3<sup>rd</sup> June 2024.

## **REASONS FOR DECISION**

22. The Tribunal considered all of the information presented to it. In reaching its decision to impose a penalty equivalent to the tenancy deposit - £550.00 – the tribunal had regard to the following factors.

- a) The Lease was for a relatively short period, being for a period of 9 months.
- b) The Respondent admitted the failure to lodge the tenancy deposit with an approved scheme.
- c) There was an explanation provided by the Respondent as to why the deposit had not been lodged, although the Tribunal also noted there was no system of checks in place to ensure the legislation had been complied with.
- d) The deposit was repaid quickly following termination of the tenancy.
- e) The Applicant, indeed, received repayment of the deposit more swiftly than what would have been the case had it been lodged with an approved scheme, confirming that there was no intention nor attempt by the respondent to retain it or make any unjustified claim upon it.

## **DECISION**

The Tribunal imposed a penalty of FIVE HUNDRED AND FIFTY POUNDS (£550.00) STERLING

## **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

16<sup>th</sup> September 2024

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Legal Member/Chair

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Date