



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

Chamber Ref: FTS/HPC/PR/24/0513

**Re: Property at 26 Abbeygreen, Lesmahagow, South Lanarkshire, ML11 0EQ
("the Property")**

Parties:

Miss Mae Gray, 72 Portland Place, Flat 6, Hamilton, ML3 7LA ("the Applicant")

**C.A.J Property Investments Ltd, 2 Bowling Green Lane, Biggar, ML12 6ES
("the Respondent")**

Tribunal Members:

Virgil Crawford (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined the following:

BACKGROUND

1. By Lease dated 13th May 2022, the Respondent let the Property to the Applicant.
2. A deposit of £450.00 was paid, in accordance with the terms of the lease. The £450.00 was lodged with My Deposit Scotland.
3. Following the commencement of the lease – the start date was 13th May 2022 – the Applicant asked to allow a pet to be kept at the Property. The letting agents, Countrylet Ltd, advised that a further £200.00 deposit would be required, presumably to provide additional security for any potential damage caused by a pet.
4. The additional £200.00 deposit was paid on 30th August 2022.
5. The £200.00 paid on 30th August 2022 was not lodged with an approved tenancy deposit scheme.
6. The £200.00 was returned to the Applicant, in full, following the termination of the tenancy.

THE CASE MANAGEMENT DISCUSSION

7. The Applicant did not participate personally in the Case Management Discussion but was represented by Mr S Carter. Craig Jenkins, the principal of

the Respondents, CAJ Property Investments Limited, participated in the Case Management Discussion. The landlord was also represented by Mrs Harrison from Countrylet Limited.

8. At the outset of the Case Management Discussion Mrs Harrison advised the Tribunal she would be representing the Respondent in relation to the tenancy deposit issue, Mr Jenkins would deal with the other matters arising. The Tribunal, however, clarified with Parties that the only application before it was an application seeking to have a penalty imposed for an alleged breach of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the TDS Regs”). It did not appear there were any more matters to be determined by the Tribunal.
9. The original Application to the Tribunal sought that the penalty imposed be *“3 times the amount from the Respondent. This will help pay for damage to my personal belongings due to mould problems within the Abbey Green property.....”*.

The Tribunal pointed out, however, that there was no separate application before it seeking any payment order as a result of damage arising due to the condition of the Property. It was explained by the Tribunal that, with an application for a breach of the TSD Regs, the Tribunal is not awarding compensation to the Applicant, rather it is imposing a penalty upon the landlord for failing to comply with the TDS Regs. While, as a matter of fact, any amount ordered to be paid requires to be paid to the tenant, thereby giving the tenant a benefit, no part of any amount which may be assessed as payable can be due to any issues arising other than those relevant to the TDS Regs and any breach thereof. Mr Carter, on behalf of the Applicant, accepted that.

10. The Tribunal, thereafter, considered the facts of the case. There was, in reality, no dispute as to the factual position. Put briefly, an initial deposit of £450.00 was paid by the Applicant to the Respondent. That initial deposit of £450.00 was lodged with My Deposit Scotland, an approved tenancy deposit scheme. Due to a request being made that a pet be permitted within the Property, a further £200.00 was requested by way of a deposit. That was paid. That additional £200.00 was not lodged with an approved tenancy deposit scheme. It was, however, returned, in full, at the end of the tenancy.
11. It was explained by Mrs Harrison, on behalf of the Respondent, that, after the £200.00 was received, enquiry was made with My Deposit Scotland as to the best way to add this to the funds already held. Countrylet Limited were not provided with an immediate answer and were advised the best way to do this would be looked into and confirmed. Thereafter, however, no confirmation was received. The matter was not chased up by Countrylet Limited and, due to that oversight, the £200.00 was not lodged with an approved scheme.
12. Having considered the information available and the submissions made at the Case Management Discussion, the Tribunal found that there was a breach of the TDS Regs and imposed a penalty of £100.00 on the Respondent.

FINDINGS IN FACT

13. The Tribunal found the following facts to be established:-
 - a. By lease dated 13 May 2022 the Respondent let the Property to the Applicant.

- b. A deposit of £450.00 was paid. This £450.00 was lodged with My Deposit Scotland, an approved tenancy deposit scheme.
- c. Following the commencement of the lease, the Applicant asked for permission to allow a cat to be kept within the Property. This was permitted subject to an further £200.00 being paid as an additional deposit.
- d. An additional £200.00 was paid by the Applicant to the Respondent, via the letting agents, on 30 August 2022.
- e. Enquiry was made with My Deposit Scotland as to the best way to add this additional £200.00 to the existing deposit. While an enquiry had been made, this was not followed up thereafter.
- f. The £200.00 paid by way of an additional deposit was not lodged with an approved tenancy deposit scheme at any stage.
- g. The £200.00 was returned to the Applicant, in full, at the conclusion of the tenancy.
- h. The failure to lodge the additional £200.00 was caused by an oversight rather than as a result of a deliberate choice on the part of the Respondents or their letting agents.
- i. The tenancy ended on 7 November 2023.
- j. An Application to the Tribunal was received on 30 January 2024.

REASONS FOR DECISION

14. It was clear from the information available that there had been a failure to lodge the £200.00, which was received as an additional deposit, with an approved tenancy deposit scheme. Indeed, it was not disputed that there had been a failure and that the TDS Regs had been breached.
15. In relation to any penalty to be imposed, Mr Carter, on behalf of the Applicant, asked the Tribunal to consider imposing three times the amount of the deposit. The Tribunal took that to mean a penalty of £600.00, that being three times the amount of £200.00, that being the additional deposit paid which was not lodged with an approved scheme.
16. While the Tribunal accepts that an Applicant is, of course, entitled to seek that the maximum penalty be imposed, the Tribunal requires to consider all of the information before it and have regard to the overall circumstances. The Tribunal would, ordinarily, reserve the maximum penalty for cases in which there had been deliberate refusal to adhere to the TDS Regs, where the landlord had failed to repay a deposit at the end of the tenancy, where the landlord had not been honest with the tenant nor the Tribunal in relation to reasons for failing to lodge the deposit or situations where there had been repeated failures by a particular landlord.
17. In the present case, the position is that the responsibility for lodging the tenant's deposit appears to have been trusted to letting agents by the landlord. The letting agents had, indeed, complied with their responsibilities in relation to the original deposit. When the additional £200.00 deposit was received – arising from a request made by the tenant – enquiry was made as to the best way to add this to the existing deposit. There was, therefore, an intention to lodge this with an approved scheme.

18. Unfortunately, no immediate answer was given by the tenancy deposit scheme as to the best way to add to the existing deposit due to an oversight by a member of staff within the letting agents, this was not chased up. There was not, therefore, a deliberate intention to avoid lodging the deposit. Indeed, the fact that the original £450.00 had been lodged timeously, indicates an intention to comply with the TDS Regs.
19. When the matter became apparent at the end of the tenancy the £200.00 was returned, in full, to the Applicant. Thereafter, when the Application was presented to the Tribunal, written submissions were presented on behalf of the Respondent admitting the failure and explaining the reason for the failure to lodge the additional deposit.
20. Having regard to all the circumstances, the Tribunal considered that the failure to lodge the additional £200.00 deposit was due to an oversight on behalf of the letting agents who were acting on behalf of the landlord. There was no deliberate intention to ignore the TDS Regs. There was no attempt to retain the £200.00 or any part thereof, at the conclusion of the tenancy and the letting agents did not seek to hide from their responsibilities or deny the failure on their part.
21. In all of those circumstances, the Tribunal considered that the breach which occurred was at the lower end of the scale of breaches of the TDS Regs and, accordingly, imposed a penalty of £100.00.

DECISION

The Tribunal granted an order against the Respondent for payment of the sum of ONE HUNDRED POUNDS (£100.00) STERLING 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.

Virgil Crawford

18 November 2024

Legal Member/Chair

Date

