



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/24/3914

Re: Property at 21D South Tay Street, Dundee, DD1 1NR (“the Property”)

Parties:

Miss Kathryn Steele, 5 Denfield Steadings, Arbroath, DD11 2QQ (“the Applicant”)

Stirling International Ltd, Arbikie Farm, Inverkeilor, Arbroath, DD11 4UZ (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent had breached the duty under Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”). The Tribunal therefore made an order for payment in the sum of £100 under Regulation 10.

Background

- 1 The Applicant applied to the Tribunal seeking an order for payment as a result of the Respondent’s failure to lodge their deposit in an approved tenancy deposit scheme under Rule 103 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and Regulation 9 of the 2011 Regulations. The Applicant sought the maximum amount of three times the deposit by way of order under Regulation 10.
- 2 The application was referred to a Case Management Discussion (“CMD”) to take place by teleconference on 3 March 2025. Both parties were written to with the date of the CMD in accordance with Rule 17(2) of the Rules and invited to make written representations.

3 On 12 February 2025 the Tribunal received written representations from the Respondent.

The CMD

4 The CMD was held on 5 March 2024 at 2pm by teleconference. The Applicant was represented by her mother, Mrs Shirley Steele. The Respondent was represented by Mr Stirling, who was joined by Mrs Monica Oizawasaa as a supporter.

5 The Tribunal had the following documents before it:-

- (i) Form G application form dated 23 August 2024;
- (ii) Private residential tenancy agreement between the parties and Gemma Proudfoot dated 29 November 2022 and 30 November 2022;
- (iii) Deposit protection certificate from the Letting Protection Service Scotland dated 11 October 2023;
- (iv) Email correspondence between the Applicant and Respondent;
- (v) The Respondent's written representations dated 12 February 2025, which included private residential tenancy between the parties and Ellen Kennedy dated 22 and 25 August 2023, email correspondence between the Respondent and Ellen Kennedy, email correspondence between the Applicant and Respondent, and an excerpt from mygov.scot titled "Tenancy deposits and moving in".

6 The Tribunal explained the purpose of the CMD and the legal test to be applied under the 2011 Regulations. The Tribunal asked the parties for their submissions on the application. For the avoidance of doubt the following is a summary of matters relevant to the Tribunal's determination of the application and does not constitute a verbatim account of the discussion.

7 Mrs Steele advised that the Applicant's tenancy had commenced on 12 August 2023. She had signed the tenancy agreement, and paid the deposit of £375, on 29 November 2022. The tenancy agreement was a joint tenancy with Miss Proudfoot. The Respondent did not pay the tenancy deposit into a deposit scheme until 11 October 2023, which was after the statutory deadline.

8 Mrs Steele explained that the Respondent had produced a second tenancy agreement between the parties and Miss Kennedy, which the Applicant had not had sight of. Miss Proudfoot had moved out in August 2023 and Miss Kennedy had replaced her in September 2023. The Applicant had not signed the second agreement. It appeared as if her electronic signature had simply been added to the agreement by the Respondent. Mrs Steele made reference to the emails between the Respondent and Miss Kennedy regarding the second tenancy agreement. The Applicant had not been copied in. It was the Applicant's position that her tenancy commenced on 12 August 2023.

- 9 Mrs Steele noted the maximum award available to the Tribunal of up to three times the deposit if the landlord was found to be in breach, and accepted that it was at the Tribunal's discretion. She confirmed that the Respondent had received her deposit back in full.
- 10 Mrs Steele explained that the situation had caused her daughter stress. She was worried about her deposit. Mrs Steele acknowledged that the Applicant had paid the deposit to the Respondent on 29 November 2022. The Tribunal queried why the deposit had been paid so far in advance of the lease commencing. Mrs Steele confirmed that her daughter had wished to secure the tenancy.
- 11 Mr Stirling disputed the allegation that the Respondent had held on to the deposit for 11 months. That was incorrect. He pointed out the obligation to pay the deposit over to a scheme within thirty working days of the start date. The deposit had been paid into the scheme on 11 October 2023. By way of mitigation he explained that there had been changes with the joint tenants, with people moving in and out, which had created confusion. The Respondent had waited for Miss Kennedys deposit before paying the sums into the scheme. He pointed out that, if it was accepted that the tenancy started on 12 August 2023, the deposit was only a couple of weeks late. The Respondent always tried to do their best by their tenants. The Applicant had received her deposit back in full. Mr Stirling explained that the Respondent had rental properties in both Dundee and Edinburgh. This was the first time anything like this had happened. With regard to any order for payment, Mr Stirling confirmed that the Respondent would abide by whatever the Tribunal may decide.
- 12 Mr Stirling confirmed that the Respondent had received the deposit from the Applicant on 29 November 2022. He explained that tenants, particularly students, would often pay a deposit and sign a tenancy agreement to secure their tenancy as soon as possible, well in advance of the start date. The Applicant tried to be as flexible as possible with any tenancy changes when they arose.

Relevant Law

- 13 The relevant law is contained with the Housing (Scotland) Act 2006 and the Tenancy Deposit Scheme (Scotland) Regulations 2011. Section 120 of the 2006 Act provides as follows:-

"120 Tenancy deposits: preliminary

(1) 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.

(2) A tenancy deposit scheme is a scheme for safeguarding tenancy deposits paid in connection with the occupation of any living accommodation.

14 The 2011 Regulations provide 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.”

“9.—(1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal 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 First-tier Tribunal—

(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 First-tier Tribunal 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.”

Findings in Fact

15 The Applicant signed a tenancy agreement with the Respondent dated 29 and 30 November 2022. The tenancy was a joint tenancy with Gemma Proudfoot.

- 16 The tenancy was a private residential tenancy under section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
- 17 The Applicant's tenancy at the property commenced on 12 August 2023.
- 18 On 29 November 2022 the Applicant paid a tenancy deposit of £375 to the Respondent.
- 19 Towards the end of August 2023 Miss Proudfoot vacated the property. The Respondent subsequently signed a second private residential tenancy agreement with Ellen Kennedy, who moved into the property in September 2023.
- 20 The Respondent paid the Applicant's tenancy deposit into an approved deposit scheme, namely the Letting Protection Service Scotland, on 11 October 2023.
- 21 The tenancy between the parties terminated on 31 May 2024.
- 22 The Applicant received her deposit back in full from the Letting Protection Service Scotland.

Reasons for Decision

- 23 The Tribunal considered it could make relevant findings in fact in order to make a decision on the application, having considered the documents before it and the submissions from parties at the CMD, in the absence of a hearing under Rule 18 of the Rules. The Tribunal determined that there were no substantive facts in dispute that would require a hearing to be fixed, and that proceeding to a decision following the CMD would be in accordance with the Tribunal's overriding objective under Rule 2 of the Rules to avoid delay so far as compatible with proper consideration of the issues.
- 24 The Tribunal was satisfied that the tenancy between the parties was a relevant tenancy for the purpose of Regulation 3(3) of the 2011 Regulations. The Regulations specify clear duties, which are incumbent on landlords in relation to tenancy deposits. Regulation 3 requires a landlord to pay any deposit received in relation to a relevant tenancy to an approved tenancy deposit scheme within thirty working days of the beginning of the tenancy and provide information to the tenant regarding the deposit. The deposit must then be held by the scheme until it can be repaid in accordance with the requirements of the Regulations following the end of the tenancy.
- 25 The Tribunal considered the particular circumstances of this case, which were slightly unusual in terms of the length of time that had passed between the

payment of the deposit and the start of the tenancy. The Tribunal understood, however, that in areas where accommodation is scarce, tenants, and in particular students, may wish to secure properties far in advance. There is nothing in the 2011 Regulations that would prevent a landlord from accepting a tenancy deposit at any point prior to the commencement of the tenancy, if the tenant is in agreement. The Tribunal would however respectfully observe that it may not be best practice to hold to tenancy deposits for an extended period of time, without the security of the deposit scheme.

- 26 The Tribunal considered the provisions of Regulation 3, which place a duty on the Respondent to lodge any deposit received within thirty working days of the start of the tenancy. The Tribunal accepted that the Applicant's tenancy had initially commenced on 12 August 2023. That was a matter of agreement between the parties. Whilst the Respondent had then entered into a second agreement with the new joint tenant, it had not taken steps to end the Applicant's original tenancy in line with the statutory requirements under the 2016 Act. Accordingly, the Tribunal concluded that, for the purpose of considering whether the landlord had complied with Regulation 3, the Respondent had thirty working days from the 12 August 2023 to submit the deposit to an approved scheme. The Respondent accepted that the deposit was not paid into a scheme until 11 October 2023, approximately 40 working days after the start date of the tenancy. The Tribunal therefore found them to be in breach of Regulation 3.
- 27 Regulation 10 states that in the event of a failure to comply, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. Accordingly having been satisfied that the Respondent had failed to comply, the Tribunal then had to consider what sanction to impose having regard to the particular facts and circumstances of the case. The application of the sanction must seek to act as a penalty to landlords and ensure compliance with their statutory duties in relation to tenancy deposits.
- 28 The Tribunal had regard to the decision of Sheriff Cruickshank in *Ahmed v Russell (UTS/AP/22/0021)* which provides helpful guidance on the assessment of an appropriate sanction. In doing so the Tribunal must identify the relevant factors, both aggravating and mitigating, and apply weight to same in reaching its decision. The Tribunal is then entitled to assess a fair and proportionate sanction to be anywhere between £1 and three times the sum of the deposit, which in this case is £5550. As per Sheriff Cruickshank at paragraph 40 of his decision in *Ahmed*:

“The sanction which is imposed is to mark the gravity of the breach which has occurred. The purpose of the sanction is not to compensate the tenant. The level of sanction should reflect the level of overall culpability in each case

measured against the nature and extent of the breach of the 2011 Regulations.”

- 29 The Tribunal considered the aggravating factors in this case. It noted that the Respondent had a large rental portfolio in both Dundee and Edinburgh and should therefore be aware of, and fully compliant with, their duties under the 2011 Regulations. The Tribunal also took into account the requirement to deter landlords from future breaches of the Regulations through the imposition of an appropriate sanction.
- 30 The Tribunal accepted that the situation with her deposit may have been stressful for the Applicant. Whilst the Tribunal had some sympathy for this, it considered that it could only give little weight to this as an aggravating factor. It appeared that the primary cause of the Applicant’s stress was the fact that the deposit had been paid 11 months before the tenancy was due to start, and was being held by the Respondent pending the commencement of the tenancy. However, the Tribunal had to look at the nature of the breach when assessing an appropriate sanction, and the duties under Regulation 3, which led to the breach, were not in fact triggered until the tenancy commenced.
- 31 The Tribunal went on to consider the mitigating factors in this application, and identified the following to which it gave significant weight:-
- (1) The deposit had been paid into the scheme on 11 October 2023. This was only fourteen days after the statutory deadline under Regulation 3.
 - (2) The deposit had then remained protected for the remainder of the tenancy.
 - (3) The Applicant received the deposit of £375 back in full following the termination of the tenancy. The Applicant does not therefore appear to have suffered any financial detriment arising from the breach.
 - (4) The situation with the deposit had arisen due to a change of occupiers of the property. It is accepted by both parties that the original joint tenant, Miss Proudfoot, left the property in August 2023 and was replaced by Miss Kennedy. The Tribunal considered it could reasonably conclude that this would have created some confusion on the Respondent’s part in having to manage various deposits.
 - (5) The Tribunal accepted Mr Stirling’s submission that the Respondent is generally compliant with their obligations regarding tenancy deposits, having been shown no evidence to the contrary. There was nothing before the Tribunal to suggest that the Respondent was deliberately seeking to evade their duties under the 2011 Regulations.

- 32 Accordingly, having weighed the aggravating and mitigating factors in this case the Tribunal considered that the level of culpability was low, when measured against the nature and extent of the breach. Accordingly taking into account the potential for a maximum award of £1125 the Tribunal determined that a fair and proportionate sanction in this case would be £100.
- 33 The Tribunal therefore made an order for payment in the sum of £100.

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.

R. O'Hare

Legal Member/Chair

12 March 2025

Date