

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit
Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/24/0737

Re: Property at 18 Thurston Road, Glasgow, G52 2JH (“the Property”)

Parties:

Mr Daniel McGarrigle, 91 Kingsland Drive, Glasgow, G52 2NG (“the Applicant”)

Atlantis-A Limited, 124 City Road, London, EC1V 2NX (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has failed to comply with the duties on a landlord in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (‘the 2011 Regulations’) and makes an order requiring the Respondent to pay to the Applicant the sum of £1000 in respect of the failure to comply with these duties.

Background

1.This application for sanction of a landlord in terms of Rule 103 of the Tribunal Rules of Procedure was first lodged with the Tribunal on 14th February 2024 and accepted by the tribunal on 28th March 2024. A case management discussion was initially fixed for 26th July 2024.At that stage the application was raised only against Ms Zhan the Applicant’s representative.

2. The tribunal had sight of the application, a tenancy agreement, emails from Tenancy Deposit Schemes, authority for the Applicant to act for both tenants named in the lease, a bank entry and a notification that the deposit had been lodged with the tenancy deposit scheme on 17th February 2024.

Case Management Discussions

3. At the case management discussion on 26th July 2024 the case management discussion was adjourned for service of the application and papers on the Respondent, the landlord named on the tenancy agreement. The Tribunal permitted this as the Applicant had clearly raised the fact that the Respondent company was the landlord in correspondence with the tribunal in February 2024 before the time bar on proceedings being raised which is 3 months after the end of the tenancy. A new case management discussion was fixed for 20th September 2024.

4. At this case management discussion on 20th September 2024 the Applicant attended, and the company was represented by Ms Andreia Zhan who dealt with their property interests.

5. Ms Zhan asked for an adjournment of the case management discussion to a later date to allow her to consider the papers fully as she had just received these as she had been on holiday. She was authorised to attend on behalf of the company and worked for them. Her former partner was the Director of the company, but she dealt with the company's property interests. She had e mailed the tribunal the day before the case management discussion asking for an adjournment.

6. The tribunal Legal Member explained the nature of the application, the duties on the landlord in terms of the 2011 Regulations and the powers of the tribunal in the event that the tribunal found that the Regulations had been breached by the landlord. The legal member also explained that the application at this stage was calling against both Ms Zhan herself and the company Atlantis-A Limited. It was explained that the application had commenced against Ms Zhan only, but the company had been added as a Respondent at the request of the applicant Mr McGarrigle. The legal member explained that papers had first been served on Ms Zhan only only for the first case management discussion, but Ms Zhan said that she had not received these and that the address the tribunal had used was a virtual office. She said these papers had not been passed to her. When the tribunal had requested papers be served on the company for the case management discussion in September 2024 these were served at the company's registered address and had been received by her.

7. The applicant Mr McGarrigle opposed an adjournment and indicated that he wanted the matter to be dealt with that day and that the Respondent had been given long enough to consider the matters raised. The tribunal legal member noted that the papers had not initially been served in the company for the first case management decision on 26 July 2024 but had been served only on Ms Zhan as an individual party. After consideration having regard to the overriding objective to deal with proceedings justly, the legal member considered it was appropriate to adjourn the case management discussion to a later date to allow Ms Zhan on behalf of the company to consider the papers and to take legal advice.

8. After discussion it was agreed that the application would continue in the name of Atlantis - A Limited only as the company is named as the landlord in the tenancy. Both parties agreed that Ms Zhan was not the landlord, and that the application should not proceed further against her as an individual.

9. The tribunal legal member indicated a direction would be issued to Ms Zhan to set out the company's position on the application and would allow Mr McGarrigle the

Applicant to respond to the representations as appropriate. A further case management discussion was fixed for 14th of February 2025 at 2pm.

10. Both Ms Zhan and Mr McGarrigle attended the case management discussion on 14th February 2025. The Respondent had lodged representations in November 2024 setting out their position. It was accepted that the deposit paid by the tenants had been lodged with the appropriate deposit protection late and in breach of Regulation 3 of the 2011 Regulations. The Respondent had lodged representations in November 2024 setting out their position and the factors which had caused the breach including some personal circumstances on the part of Ms Zhan. The Respondent's representations also referred to case law in relation to the amount of any sanction to be imposed.

11. The tenancy between the parties had commenced on 20th of June 2022 and ended on 12th March 2024. The monthly rent was £950 per calendar month, and it was agreed that the deposit paid was £1425. Two tenants were named on the tenancy agreement including the Applicant who was authorized to act on behalf of both tenants in making the application to the Tribunal.

12. Ms Zhan confirmed at the case management discussion on 14th of February that the Respondent accepted the breach of the Regulations in relation to the late lodging of the tenancy deposit. The tribunal legal member asked if the Respondent accepted a breach of the other duty under Regulation 3 to give certain information to the tenants as set out in Regulation 42 of the Regulations. The tribunal legal member went through the required information with Ms Zhan, and she confirmed that a breach was accepted, as this information had not been sent, but she pointed out that the tenants had most of the information required anyway.

13. The tribunal having heard that the Respondent accepted the breach of the two duties within the Regulations was in a position to move to consider the amount of sanction to be imposed on the landlord.

14. Mr McGarrigle the Applicant had asked in his application to the tribunal for the maximum sanction to be imposed, three times the amount of the deposit. He maintained this position at the case management discussion. He referred to the length of time which the tenancy deposit had been unprotected, for the vast majority of the tenancy. He pointed to the fact that he had been notified by a tenancy deposit protection scheme in February 2024 that the deposit was protected but the start date of the tenancy was given on the notification as being the same date that the deposit was protected. The Applicant Mr McGarrigle was concerned that this was an attempt on the part of the Respondent to cover up the lateness in lodging the deposit. He pointed out that notice to leave had been given by the tenants in February 2024 and that the tenancy deposit scheme provider had a policy of retaining deposits for 30 days. The late lodging of the deposit had caused delays in return of the deposit due to the 30 day retention policy. He said that he had certain issues with the tenancy deposit scheme itself and had required to complain to the ombudsman about their service.

15. For the Respondent Ms Zhan pointed to representations made setting out certain personal and health difficulties that she had had. She said that she was not aware that the deposit had not been lodged and as soon as this had been realised it was protected in a deposit scheme. It seemed to be accepted that the tenants giving notice and querying the return of the deposit had been the factor which brought the deposit to the deposit to her attention. When asked if the date given to the tenants by the tenancy deposit protection scheme as the date when the deposit had been protected, had been entered incorrectly in order to hide the fact that the deposit was lodged late Ms Zhan said that this was not the case and this was the only date that the drop down menu allowed her to use to us. Mr McGarrigle did not accept that and asked the tribunal to consider that this was a deliberate act. Both parties asked the tribunal deal with the matter on that day and consider and use its own judgement in assessing the facts put forward.

16. Ms Zhan also advised the tribunal that the Respondent ran a property business and had three properties in total. She said that this had been an oversight, and it was very much a “one off” situation. She had done some reading regarding the levels of sanction for a breach imposed by both the Sheriff Court and in previous tribunal decisions and she submitted it would be entirely disproportionate to sanction the landlord for the maximum amount permitted sum three times the tenancy deposit which would amount to £4275. She said that the company director was her former life partner they had been in a relationship which had ended. Both had thought the other person had lodged the deposit. She said that the deposit was returned in the end by the deposit protection scheme to the tenants.

17. Mr McGarrigle challenged what had been said and said that the Respondent if renting out a property should have been in a state to administer the deposit, and it should have ensured it was protected and ensured that the appropriate information was passed on to the tenants. He said he had been left with delays, and this should not have occurred as it was not his fault or the fault of the other tenant. He said that the delay had caused him inconvenience in having his deposit returned to him. Both parties indicated they had no other representations to make and asked that the tribunal deal with the matter that day without a hearing being fixed.

18. The Tribunal was satisfied that it had sufficient information upon which to make an order and that the proceedings had been fair.

19. Having considered all the representations made the Tribunal sanctioned the landlord in the sum of £1000 and explained to the Applicant that once the decision was issued and in the event that there was no request for permission to appeal he would receive the order and require to make arrangements for enforcement of the order as required to obtain payment and that the Tribunal would not be involved in this.

Findings in Fact

20. The Respondent company is the owner of the property.

21. The parties including a second tenant entered into a private residential tenancy agreement at the property which commenced on 20th June 2022.

22. A tenancy deposit of £1425 was paid by the tenants at the start of the tenancy.
23. The tenancy is a “relevant” tenancy in terms of the 2011 Regulations.
24. The Respondent did not pay the Applicant’s tenancy deposit into an approved tenancy deposit scheme until 17th February 2024, when it should have been paid into a tenancy deposit scheme by the start of August 2022.
25. The tenancy ended on 12 March 2024.
26. The Respondent did not provide the required information to the Applicant in terms of Regulation 42 of the 2011 Regulations.
27. The tenancy deposit scheme into which the deposit was ultimately paid returned the deposit to the Applicant after the tenancy had ended.
28. Due to the late lodging of the tenancy deposit and the Tenancy Deposit Scheme Provider’s 30 retention policy there was some delay in the return of the deposit to the Applicant.
29. The Respondent company rents out three properties in total.
30. The failure to lodge the deposit on time and to give the required information to the Applicant came about as a result of an oversight on the part of the director of the Respondent company and the property manager Ms Zhan.

Reasons for Decision

31. The Respondent admitted the failure to comply with the duties under Regulation 3 of the 2011 Regulations to protect the tenancy deposit in an approved tenancy deposit scheme within 30 working days of the start of the tenancy and to give the information to the tenants required in terms of Regulation 42 of the 2011 Regulations.
32. The tribunal considered the appropriate sanction and what that should be in the circumstances based on all of the information which the tribunal had received. In considering the appropriate level of sanction to be made in the circumstances the tribunal considered the need to proceed in a manner which is fair proportionate and just, having regard to the seriousness of the breach (*Jensen v Fappiano* GWD 4-59)
33. The Tribunal noted the view expressed by Sheriff Ross in *Rollet v Mackie* 2019 UT 45 that the level of penalty should reflect the level of culpability involved.
34. The Tribunal noted firstly that Respondent had admitted the failure to protect the Applicant’s deposit timeously and the failure to provide the required information in terms of regulation 42 of the Regulations.
35. The tribunal required to consider whether there were any aggravating factors in this case which might result in an award at the most serious end of the scale. The Applicant Mr McGarrigle was of the view that when the deposit was ultimately protected, the fact that the start date for the tenancy had been given as the date the tenancy deposit was protected was an attempt to hide the late lodging of the deposit. This was denied by the Respondent and the tribunal did not consider that it had sufficient information to find that there had been any malicious or fraudulent intention by the Respondent in relation to the late lodging of the deposit and the inaccuracy in the information given to the tenancy deposit scheme as to the tenancy start date. The Tribunal considered the length of time that the tenancy deposit had been unprotected, the fact that it was the giving of notice to end the tenancy by the Applicant which

appeared to have brought the matter of the failure to lodge the deposit to light and further noted that the deposit was returned to the Applicant and that the breaches were admitted. It was also noted that the late lodging of the deposit which the tenancy deposit protection scheme required to retain for 30 days resulted in a delay in the deposit being returned to the Applicant. The Applicant had not been prevented from using the tenancy deposit scheme mediation service had he required to.

36. The failure to lodge the deposit timeously and to give the required information was accepted by the Tribunal as being an oversight on the part of the Respondent company director and the property manager. The tribunal noted however it was the Respondent's responsibility as a landlord to be aware of duties and ensure compliance with these duties. The Respondent company should have ensured that the deposit was lodged in an approved scheme timeously and that the required information was given to the tenants

37. Taking all of the above circumstances into account the tribunal determined that a sanction in the sum of £1000 would be appropriate in this case.

Decision

The Tribunal determined that the Respondent has failed to comply with the duties on a landlord in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ('the 2011 Regulations') and makes an order requiring the Respondent to pay to the Applicant the sum of £1000 in respect of the failure to comply with these duties.

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.

Valerie Bremner

14.2.25

Legal Member/Chair

Date