

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)**

Chamber Ref: FTS/HPC/PR/24/4351

Re: Property at 43A/1 LOONS ROAD, DUNDEE, DD3 6AB (“the Property”)

Parties:

Mr Shawn Peters, 89 MURRAY STREET, MONTROSE, DD10 8JZ (“the Applicant”)

**Ms Audrey Ellison or Angus, 7 COUNTY PLACE, PERTH, PERTSHIRE,
PH28EE (“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 1st and 2nd May 2024 the Respondent let the Property to the Applicant.
2. The start date of the tenancy was 6th May 2024.
3. A deposit of £595.00 was paid by the Applicant to the Respondent.
4. The lease between the Parties was a private residential tenancy. The Applicant added numerous additional tenancy conditions at paragraph 37 of the Model Private Residential Tenancy Agreement. Separately, however, the Parties, on 7th May 2024, entered into a separate agreement. This separate

agreement referred to the Private Residential Tenancy which started on 6 May 2024 and provided the following:-

- The tenant agrees to occupy the let Property for a minimum period of 12 months (it was not necessary for the Tribunal to rule on the legality of this clause).
 - The Parties agree that the minimum notice period to be given by the tenant to the landlord to terminate the tenancy is a period of 2 months. (This clause is lawful in terms of s49 of the Private Housing (Tenancies) (Scotland) Act 2016)
5. The Applicant, prior to the end of May 2024, verbally intimated to the Respondent's letting agents that he intended to terminate the tenancy. This was confirmed by email dated 7 June 2024.
 6. The tenancy ended on 24 June 2024.
 7. The tenancy deposit was returned, in full, on 7 August 2024.
 8. The Applicant presented an Application to the Tribunal on 13 September 2024 seeking that a penalty be imposed upon the Respondent for failure to comply with the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the TDS Regs").

THE CASE MANAGEMENT DISCUSSION

9. The Applicant participated personally in the Case Management Discussion. The Respondent did not participate personally. She was represented by Mr A Mohammed of A and S Properties.
10. Mr Mohammed had previously forwarded written submissions to the Tribunal. It was accepted that a deposit had been paid by the Applicant. It was accepted this had not been lodged with an approved Tenancy Deposit Scheme.
11. The written submissions explained that the business normally lodges all deposits received from tenants in any calendar month with an approved scheme on the last day of each calendar month. This is recorded on a "bulk upload sheet" which is forwarded to My Deposit Scotland.
12. In this case, however, the tenancy and the deposit were removed from the bulk upload sheet. The reason for that is because, prior to the end of May 2024, and despite the tenancy only commencing on 6 May 2024, the Applicant intimated his intention to terminate the tenancy. A member of staff at A and S Properties, therefore, "cancelled" the tenancy on their systems, resulting in the deposit not being paid to an approved scheme.
13. Following an exchange of emails between the Parties – during which it was suggested that a sum ranging from £180.00 - £250.00 would be retained from the deposit to cover costs associated with identifying and securing a new

tenant and, presumably, for potential loss of rent - the deposit was returned, in full, on 7th August 2024.

14. The Applicant invited the Tribunal to impose a penalty equivalent to three times the tenancy deposit amount.
15. The Application to the Tribunal stated the Applicant was seeking “compensation” for the breach of the TDS Regs. The Tribunal pointed out, however, that the matter to be determined by the Tribunal is not one of compensation, rather it is to determine an appropriate penalty upon the landlord for failure to comply with the TDS Regs.
16. In advancing reasons for a penalty to be imposed, the Applicant advised the following:-
 - a) The tenancy was for a short period, the Applicant advising it was agreed on 18th April 2024 with the deposit having been paid then.
 - b) The tenancy ended on 24th June 2024.
 - c) The deposit was not lodged with an approved scheme at any point in time.
 - d) The matter has caused the Applicant a lot of “mental stress”.
 - e) The letting agents for the Respondent had suggested withholding certain amounts from the deposit due to the early termination of the tenancy agreement. This was apparently due to the contract having been “broken” and a delay in securing another tenant.
 - f) He was never told that the deposit had not been lodged with an approved scheme
 - g) He wondered how many other deposits this had happened to
 - h) He was wishing to ensure it did not happen to any other tenants.
17. On behalf of the Respondent, Mr Mohammed advised the Tribunal of the following:-
 - a) The Applicant moved into the property on 6th May 2024. That was the start date of the tenancy.
 - b) Before the end of May 2024 the Applicant verbally intimated to the letting agents he intended leaving the property.
 - c) The tenancy deposit was not lodged with an approved scheme. This, Mr Mohammed accepted, was an error on the part of a member of his staff.
 - d) Due to the tenancy being terminated soon after the start date, the tenancy was “cancelled”, that resulting in the deposit not being transferred to an approved scheme.
 - e) The Applicant had entered into a separate agreement with the Respondent in terms of which he agreed to give two months’ notice of any intention to terminate the tenancy.
 - f) The issue arose due to human error.

DISCUSSION AND REASONS FOR DECISION

18. In determining the appropriate penalty to impose, the Tribunal reminded Parties that it was, indeed, a penalty which was being imposed for a failure to lodge the deposit, rather than compensation for any “mental stress”, anxiety or inconvenience caused to the Applicant. It is simply a quirk of the TDS Regs that the penalty imposed is, as a matter of fact, paid to the tenant resulting in what may be considered to be a bonus, or windfall, for the tenant. It is not, however, compensation.
19. The Tribunal determined that an appropriate penalty was one of £300.00. In assessing that penalty, the Tribunal had regard to the following:-
- a) The tenancy was a short one. The start date was 6th May 2024. The tenancy ended on 24th June 2024.
 - b) The Applicant intimated his intention to terminate the tenancy prior to the end of the month in which it commenced.
 - c) In the circumstances, while there was still a failure on the part of the letting agents to lodge the deposit with an approved scheme, the reason advanced for that failure is understandable, that being that a member of staff “cancelled” the tenancy upon being advised that it was to be terminated, resulting in the tenancy deposit not being included in the bulk upload to an approved scheme on the last day of the calendar month, as would normally have occurred.
 - d) While there was an exchange of emails between the Parties suggesting that a payment was due by the Applicant due to the early termination of the tenancy, this was justified having regard to the agreement entered into between the Parties in terms of which the Applicant undertook to give two months’ notice of any intention to terminate the tenancy
 - e) In terms of the TDS Regs the tenancy deposit would only have required to be lodged with an approved scheme by 17th June 2024 (30 working days from the start date of the tenancy, that being 6th May 2024).
 - f) Prior to the date upon which the deposit required to be lodged, the Applicant had given both verbal intimation of his intention to terminate the tenancy (that being given before the end of May 2024) and written notice, (that being given by way of email dated 7th June 2024).
 - g) The tenancy deposit was returned, in full, on 7th August 2024.
 - h) The Tribunal was unaware of any previous failures on the part of the Respondent, or her letting agents, to comply with the TDS Regs and, despite comments made by the Applicant, is not in a position to speculate in relation to the same.
 - i) The Respondents agents did not shirk from their responsibly, accepting that, in this case, there had been a breach of the TDS Regs.
20. Having regard to the factors referred to above, the Tribunal considered the breach of the TDS Regs fell at the lower end of the range of cases the Tribunal regularly deals with.

21. Mr Mohammed declined to provide any detailed information in relation to the financial position of either the Respondent or his firm. In the circumstances, the Tribunal was unable to have regard to any detailed financial information in selecting an appropriate penalty.

22. In all the circumstances, the Tribunal determined that a penalty equivalent to approximately one half of the tenancy deposit amount is appropriate. The Tribunal imposed a penalty of £300.00 upon the Respondent.

DECISION

The Tribunal granted an order against the Respondent for payment of the sum of THREE HUNDRED POUNDS (£300.00) 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

31 March 2025

Legal Member/Chair

Date