

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 Section 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/24/5496

Re: Property at 42F Bedford Avenue, Aberdeen, AB24 3YQ (“the Property”)

Parties:

Miss Selena Maria Russo, Building 9, Flat 4, Hawkhill Close, EH7 6FG (“the Applicant”)

Mr Iain Lennox, 83 East Craigs Rigg, Edinburgh, EH12 8JA (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order for payment against the Respondent in favour of the Applicant in the sum of £300.

Background

1. The Applicant submitted an application under Rule 103 for an order for payment on the basis that it was said that the Respondent had failed to comply with the Tenancy Deposit Schemes (Scotland) Regulations 2011.
2. By decision dated 3 December 2024, a Convenor of the Housing and Property Chamber having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).
3. The Tribunal issued letters on 1 March 2025 informing both parties that a case CMD had been assigned for 15 May 2025, which was to take place by conference call. In that letter, the parties were also told that they were required to take part in the discussion and were informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and

considers the procedure to have been fair. The Respondent was invited to make written representations by 22 March 2025.

4. The Respondent lodged written representations by email on 10 April 2025.

The case management discussion

5. Both parties joined the conference call and represented themselves. The Tribunal explained the purpose of the CMD.

Matters agreed

6. The parties were agreed that the tenancy started on 16 September 2023 and ended on 8 September 2024. It was also agreed that the Applicant paid a deposit of £250 and that deposit was not secured in an approved scheme. At the end of the tenancy the Applicant still owed some money to the Respondent and the parties agreed that the money owed could be offset against the deposit. There was a small balance due back to the Applicant and the Respondent paid that along with a modest payment in respect of inconvenience.

Matters in dispute

7. The parties were not agreed on the value of the payment made by the Respondent in respect of inconvenience. The Applicant maintained that it was £30 whilst the Respondent maintained that it was £50. Although there was no agreement about this point, that was not material to the Tribunal's consideration of the present application. The Applicant's position was that she had multiple tenancies with the Respondent and her deposit has never been protected. The Respondent agreed that he had failed to secure an earlier deposit but the parties agreed that the deposit in respect of an earlier tenancy had been repaid in full.
8. Having considered the papers and heard from the parties, the Tribunal decided that the Respondent breached the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"). The parties were advised that the Tribunal would consider what level of payment order was appropriate and thereafter issue a written decision.

Findings in Fact

9. The parties entered into a private residential tenancy which commenced 16 September 2023.
10. The Applicant paid a deposit of £250 to the Respondent.
11. The Respondent failed to comply with his duty in terms of Regulation 3 of the 2011 Regulations in respect that the deposit paid by the Applicant was not paid to an administrator or an approved scheme within 30 working days as required.

Reason for Decision

12. The Tribunal proceeded on the basis of the written documents which were before it and the information provided by the Applicant at the CMD. The Respondent accepted that he had failed to secure the Applicant's deposit within an approved scheme. The parties agreed that the deposit would be set off against sums due by the Applicant to the Respondent. The Respondent paid the Applicant the balance of the deposit together a nominal sum for inconvenience.
13. The Regulations exist to protect a tenant's deposit and to provide the benefit of dispute resolution, if required.
14. The terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 are mandatory and state *"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."*
15. The Tribunal was satisfied that the Respondent failed to comply with his duties in terms of that regulation. It was the Respondent's duty to pay the deposit to the scheme administrator within 30 working days. The Tribunal was mindful that the deposit was not protected for the entirety of the tenancy. The Tribunal also took account of the fact that the parties agreed that the deposit would be offset against sums due by the Applicant to the Respondent. The Respondent recognised that he had failed to comply with the Regulations and made a payment to the Applicant for inconvenience.
16. The Tribunal considered that its discretion in making an award requires to be exercised in a manner consistent with the case *Jenson v Fappiano (Sheriff Court) (Lothian & Borders, Edinburgh) 28 January 2015*. It must be fair, just and proportionate and informed by taking account of the particular circumstances of the case.
17. The Tribunal considered the decision of the Upper Tribunal (UTS/AP/19/0020) which states: *"Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate of reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals."*
18. The present case does not represent the most serious of breaches of the Regulations. An appropriate sanction in these circumstances for failure to comply with the duties was to order the Respondent to pay the Applicant £300. The value of the deposit was modest. The Respondent accepted that he was at fault for failing to secure the deposit. There was no evidence of deliberate of

reckless failure to comply with the 2011 Regulations and there was no actual loss 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.

N Irvine

Legal Member/Chair

Date: 15 May 2025