



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/24/5435

Re: Property at 1A Balmoor Terrace, Peterhead, AB42 1EP (“the Property”)

Parties:

Miss Chantelle Gentle, 4 Almanythie Road, Peterhead, AB42 1LD (“the Applicant”)

Mr Mark Buchan, The Walled Garden, Crimonmogate, Lonmay, AB43 8SB (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member)

Decision (in absence of the Respondent)

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 £750.

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 9 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 15 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 5 April 2025. No representations were received.

The case management discussion

4. The Applicant joined the conference call and represented herself. The Respondent did not join the call and the discussion proceeded in his absence. This case called alongside a related case which proceeds under chamber reference FTS/HPC/CV/24/5761. The Tribunal explained the purpose of the CMD. The Applicant confirmed that the tenancy started on 2 June 2023 although she did not move into the Property until 8 June 2023. She signed a tenancy agreement, but the Respondent did not provide her with a copy. She paid a deposit of £500 on 8 June 2023. The tenancy ended on 9 September 2024. She offered to meet the Respondent to hand over keys, but no arrangement was made by the Respondent. The Respondent told the Applicant that after he had checked the Property, he would return her deposit. The Applicant left the Property in good condition. The Respondent did not make any contact with Applicant about her deposit, and he has not repaid it. The Applicant made enquiries with the approved schemes and was advised that they have no record of her deposit being secured.
5. Having considered the papers and heard from the Applicant the Tribunal decided that the Respondent breached the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"). The Applicant was advised that the Tribunal would consider what level of payment order was appropriate and thereafter issue a written decision to the parties.

Findings in Fact

6. The parties entered into a private residential tenancy which commenced 2 June 2023.
7. The Applicant paid a deposit of £500 to the Respondent on 8 June 2023.
8. 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

9. 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 did not lodge any written representations or participate in the CMD. The Respondent failed to secure the Applicant's deposit within an approved scheme. The Information before the Tribunal was that the Respondent did not return her deposit at all and failed to make contact with her about that.

10. The Regulations exist to protect a tenant's deposit and to provide the benefit of dispute resolution, if required.
11. 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."*
12. 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 Applicant was deprived of the opportunity to use the adjudication process at the end of the tenancy to seek return of her deposit.
13. 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.
14. 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."*
15. The Tribunal considered that whilst there was no information to suggest that the present case is the most serious of breaches of the Regulations, the Respondent has failed to engage with the Applicant in relation to return of her deposit. An appropriate sanction in these circumstances for failure to comply with the duties was to order the Respondent to pay the Applicant £750. There was no evidence that the Respondent repeated the breach in relation to other tenants, no evidence of deliberate or reckless failure to comply with the 2011 Regulations but there was 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

15 May 2025
Date
