



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 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/24/4948

Re: Property at 2/2 112 Buttars Loan, Dunndee, Tayside, DD2 4QA (“the Property”)

Parties:

Mr Euan Waugh, 2/3 21 Crathie Drive, Glasgow, G11 7XE (“the Applicant”)

DJP Property Services LTD, 45 Lindsay Berwick Place, Anstruther, Fife, KY10 3YP (“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 Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”). The Tribunal therefore determined to make an order for payment in the sum of One thousand six hundred and fifty pounds (£1650) Sterling under Regulation 10.

Background

- 1 The Applicant applied to the Tribunal for a payment order 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 a sanction against the Respondent as a result of their failure to lodge the Applicant’s tenancy deposit with an approved tenancy deposit scheme. The application was conjoined with a separate application under Rule 111 of the Rules seeking the return of the Applicant’s tenancy deposit.
- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 29 April 2025. Notification of the CMD was given to

the parties in terms of Rule 17(2) of the Rules. Said notification was served upon the Respondent by sheriff officers on 24 February 2025.

- 3 Both parties were invited to make written representations in advance of the CMD. No written representations were received from either party.

The CMD

- 4 The CMD took place on 29 April 2025 at 10am by teleconference. The Applicant joined the call. The Respondent did not. The Tribunal delayed the start time of the CMD before determining to proceed in their absence.
- 5 The Tribunal had the following documents before it:-
 - (1) Form G application form dated 22 October 2024;
 - (2) Private residential tenancy agreement between the parties dated 6 September 2022;
 - (3) Email correspondence between the parties; and
 - (4) Emails from the approved safety deposit schemes to the Applicant confirming that they do not hold his deposit.
- 6 The Tribunal explained the purpose of the CMD and asked the Applicant for his submissions on the application. For the avoidance of doubt the following constitutes a summary of the key elements of the discussion and is not a verbatim account of the proceedings.
- 7 The Applicant confirmed that he wished to seek a sanction as a result of the Respondent's failure to lodge his deposit with a tenancy deposit scheme. He had been in correspondence with the Respondent regarding the return of his deposit but they had since ceased communication on the issue. He had not received his deposit back from the Respondent. He had noticed that his tenancy agreement did not specify where the deposit was held. He confirmed that his tenancy had ended in June or July 2024. He had paid the tenancy deposit to the Respondents at the commencement of the tenancy in September 2022.

Relevant Law

- 8 The relevant law is contained within 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.

9 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

10 The parties entered into a tenancy agreement in respect of the property, which commenced on 7 September 2022.

- 11 The tenancy was a private residential tenancy under section 1 of the Private Housing (Tenancies) (Scotland) Act 2016. The tenancy is a relevant tenancy for the purpose of Regulation 3 of the 2011 Regulations.
- 12 On or around 6 September 2022 the Applicant paid a tenancy deposit of £550 to the Respondent.
- 13 In terms of Clause 24 of the aforementioned tenancy agreement the Respondent undertook to lodge any deposit received with a tenancy deposit scheme within 30 working days of the start date of the tenancy.
- 14 In terms of Regulation 3(a) and (b) of the 2011 Regulations the deposit should have been lodged with a scheme, and information provided to the Applicant under Regulation 42, no later than 19 October 2022.
- 15 The Respondent did not pay the Applicant's deposit into a tenancy deposit scheme.
- 16 The Respondent did not return the Applicant's tenancy deposit to him at the end of the tenancy.

Reasons for Decision

- 17 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 the Applicant 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.
- 18 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.
- 19 In terms of Regulation 3 of the 2011 Regulations, the Respondent in this case required to pay the deposit over to a deposit scheme no later than 19 October

2022. There was no evidence before the Tribunal to suggest that the deposit had been lodged by the Respondent timeously with an approved tenancy deposit scheme. The Tribunal therefore found the Respondent to be in breach of Regulation 3.

20 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.

21 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 £1650. 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.”

22 The Tribunal considered the aggravating factors in this case. In the absence of any evidence to the contrary, the Tribunal accepted that the Applicant had paid his deposit to the Respondent and that the deposit had been retained by the Respondent following the termination of the tenancy. The Applicant had not therefore had the benefit of the independent dispute resolution mechanism that would have been in place were his deposit have been paid into a tenancy deposit scheme.

23 The Tribunal went on to consider whether there were any mitigating factors in this case. The Respondents had not entered the proceedings. They had submitted no evidence to explain the failure to protect the Applicant's deposit. On that basis the Tribunal concluded that the level of culpability in this case was high. The Applicant had been put to the inconvenience of submitting an application to the Tribunal to recover his deposit. Had it been paid into a tenancy deposit scheme, he would not be in this position.

24 Accordingly, having weighed the aggravating and mitigating factors in this case the Tribunal considered that the level of culpability was high, when measured against the nature and extent of the breach. Accordingly the Tribunal determined that a fair and proportionate sanction in this case would be the maximum sanction of £1650.

25 The Tribunal therefore made an order for payment in the sum of £1650.

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.

Legal Member: Ruth O'Hare

Date: 29 April 2025

Ruth O'Hare