

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/25/0933

**Re: Property at 6 Sourlie Terrace, Girdle Toll, Irvine, North Ayrshire, KA11 1AN
("the Property")**

Parties:

Ms Jennifer Gillan, 6 Sourlie Terrace, Girdle Toll, Irvine, North Ayrshire, KA11 1AN ("the Applicant")

Mrs Shaima Nawar, Mr Mohammed Najim, 2 Goldcraig Court, Girdle Toll, Irvine, North Ayrshire, KA11 1RD ("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. The Respondent let the Property to the Applicant. There appears to have been a number of tenancy agreements entered into between the Parties. The tenancy, however, appears to have commenced during May 2019.
2. The original deposit was, apparently, £450.00. This was paid by the Applicant to the Respondent. The tenancy deposit was not lodged with an approved scheme until 6th September 2023.
3. The Applicant presented an application to the Tribunal seeking that a penalty be imposed under the Tenancy Deposit Schemes (Scotland) Regulations

2011 (“the TDS Regs”). The application sought a penalty in the sum of **“£1500, three times the value of the deposit.”**

4. At the case management discussion an issue arose as to the exact amount of the deposit. The Respondent asserted that £450.00 was paid as a deposit, that being the original deposit in 2019. A more recent lease entered into between the parties stated the deposit as being £500.00.

THE CASE MANAGEMENT DISCUSSION

5. A case management discussion was assigned to be conducted by teleconference at 2pm on 13th June 2025. The Applicant participated in the case management discussion but was also represented by Mr A Meek of CHAP. Mr J Mulholland attended as a supporter. The Respondent was represented by Mr D Doig, Solicitor, of Raeside Chisolm Solicitors, Glasgow.

The Respondent

6. Mr Doig, on behalf of the Respondent, accepted there had been a breach of the TDS regs. It was explained that this arose due to the Respondent's ignorance of the TDS Regs. It was acknowledged, however, that ignorance of the law did not amount to a legal defence to the application.
7. It was stated by Mr Doig that the deposit was always available, it having been retained by the Applicant and, once it was drawn to her attention that it ought to have been lodged with an approved tenancy deposit scheme, she attend to that, albeit a number of years after the deposit had been paid.
8. The tenancy is still ongoing and the deposit is now lodged with an approved tenancy deposit scheme. The Applicant, therefor, will be able to take advantage, if necessary, of the dispute resolution process operated by the scheme at the conclusion of the tenancy.
9. In written submissions presented to the Tribunal in advance of the case management discussion, the Applicants representative stated **“the application should be refused in the circumstances.”** When making oral submissions Mr Doig accepted that, there being an admitted breach of the TDS Regs, the application would not be refused. He explained that the comment within the written submissions was directed at the request for a penalty of three times the level of the deposit being imposed. He submitted that, having regard to the explanation provided, any penalty imposed should be significantly less than that.

The Applicant

10. On behalf of the Applicant, Mr Meek suggested that the deposit was £500.00 referring to the lease which had been produced. This was not accepted by the

Respondent. The lease produced with the application was a lease dated 6 May 2023 and was not the original lease under which the deposit was paid. Having regard to all other information available to the Tribunal, however, the Tribunal did not consider this to be a dispute which required a hearing to be fixed.

11. Mr Meek moved the Tribunal to impose a penalty at the maximum level. On behalf of the Applicant it had been stated in the original application that:-

- The original tenancy agreement was invalid as the landlord had used an incorrect template.
- The landlord provided multiple new tenancy documents since then.
- The deposit was only lodged with an approved scheme when the Applicant was taking steps to evict the Respondent.
- The Respondent was not a registered landlord at that time.
- The tenancy is in need of repair which the Respondent has not attended to.
- The Respondent has suggested the Applicant is responsible for the cost of repairs. It is suggested this was being done to enable the Respondent to retain the deposit at the end of the tenancy.

12. The Tribunal, while noting the comments made on behalf of the Applicant made it clear that the function of the Tribunal in a case of this type is to impose a penalty upon a landlord for failing to comply with the TDS Regs. While, by virtue of the TDS Regs, any penalty imposed is, as a matter of fact, paid to the tenant, no part of the penalty is intended to provide compensation to the tenant for any issue arising during the tenancy.

13. Having regard to the function of the Tribunal in such cases, the Tribunal pointed out that most of the matters relied upon by the Applicant in support of a penalty of the maximum amount were irrelevant or more relevant to issues of compensation rather than punishing the Respondent.

Discussion

14. Having afforded Parties an opportunity to make any further submissions in relation to the matter, the Tribunal determined that a penalty in the amount of £300 was appropriate.

15. In assessing the level of penalty to be imposed, the Tribunal took into account the following factors:-

- a) The Respondent is an inexperienced landlord.
- b) While it does not provide a defence, the reason for the failure to lodge the tenancy deposit with an approved scheme was due to ignorance of the scheme on the part of the Respondent.
- c) The deposit was available and was in a bank account from the time it was paid until it was lodged with an approved scheme.

- d) The deposit was lodged with an approved scheme during the currency of the tenancy.
- e) The Respondent is able to take advantage of the protections afforded to tenants by the tenancy deposit schemes at the conclusion of the tenancy.
- f) While there was a failure on the part of the Respondent to lodge the tenancy deposit timeously, there was no deception by her. She had not misled the Applicant into thinking the deposit had been lodged and she did, indeed, lodge it once her omission was drawn to her attention.

16. The Tribunal enquired of Mr Doig as to whether a time to pay order would be requested. No such order was requested on behalf of the Respondent.

DECISION

The Tribunal granted an order against the Respondent for payment of the sum of THREE HUNDRE 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

Legal Member/Chair

Date: 13 June 2025

