



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (Regulations)

Chamber Ref: FTS/HPC/PR/24/2080

Re: Property at 58 Glen Luce Terrace, East Kilbride, G74 1DT (“the Property”)

Parties:

Ms Jackie McKenzie, 117 Laurel Drive, East Kilbride, G75 9JG (“the Applicant”)

Mr Anthony Gill, 1 Brendon Avenue, East Kilbride, G75 9GT (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the sum of £600 to the Applicant.

Background

This is an application under Regulation 9 of the Regulations and Rule 103 of ***The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Rules)*** in respect of an alleged failure to protect a tenancy deposit.

The Tribunal had regard to the following documents lodged in advance of the Hearing:

1. Application received 5 May 2024;
2. Tenancy Agreement commencing 25 March 2021;
3. Correspondence between the Parties confirming tenancy end date and non-return of deposit.

Hearing

The case called for a Hearing by Webex on 9 July 2025. The Applicant participated and was represented by Mr Winterbottom and Ms Khali of Strathclyde University Law Centre. The Respondent participated and represented himself.

The Tribunal ran through the procedure to be followed with the Parties and also identified the following agreed facts:

1. The Respondent let the Property to the Applicant from 25 March 2021 until the termination of the tenancy following the Applicant's email giving notice dated 31 January 2024;
2. The Applicant paid the Respondent a deposit of £400 at commencement of the lease;
3. The deposit was not returned by the Respondent;
4. The deposit was not protected in one of the three deposit protection schemes by the Respondent.

Evidence

The Tribunal heard evidence from both Parties, Mr Mark Woods and Ms Nikki Sweeney for the Applicant and Ms Ashley Degning for the Respondent.

In so far as relevant to this case the evidence was as follows:

Reason for not repaying the deposit

The Respondent's position was that he had retained the deposit due to 2 months' rent arrears on the Property at conclusion of the lease. He accepted that he had repaid the last 2 months' rent at the Applicant's request.

He was asked why he had repaid the rent on request and explained that he did so because the Applicant had asked him. He considered that this meant there were 2 months' unpaid rent at conclusion of the lease. The last rent the Applicant had paid (according to the Respondent) was in November 2023.

The Applicant did not accept that there were any rent arrears. The Respondent had repaid the rent to her because she wasn't living in the Property. Her explanation was that she couldn't live in the Property. The Property had been undergoing repair and refurbishment following water damage.

Failure to protect the deposit

The Respondent's explanation for not protecting the deposit was that he was unaware of the requirement to do so. Prior to letting the Property to the Applicant he had used Letting Agents for a period of 8 years. They had dealt with matters on his behalf from the outset. He was aware of some deposit protection scheme but he thought this was for landlords.

This was the only Property that the Respondent let out.

Having considered the Parties' evidence in so far as material the Tribunal made the following findings in fact:

1. The Parties let the subjects under a tenancy agreement commencing 25 March 2021;
2. The Applicant paid a deposit of £400 at commencement of the tenancy agreement;
3. The Applicant gave notice to terminate the tenancy by email of 31 January 2024 and the deposit has never been repaid to her;
4. The Respondent refused to repay the deposit on the basis that he considered the Applicant was in 2 months' rent arrears;
5. The Respondent has been a landlord since around 2013;
6. The Respondent does not have any other rental properties;
7. The Respondent used a letting agent from commencement of letting the Property until the tenancy with the Applicant which he dealt with himself;
8. The Respondent was unaware of the requirement to protect the deposit;
9. The deposit had not been protected for the duration of the tenancy and had not been returned to the Applicant;
10. The Applicant was not in arrears of rent at the end of the tenancy.

Decision and Reasons

Reason for not repaying the deposit

The Tribunal considered the Parties' evidence and concluded that as the Respondent had repaid the rent to the Applicant for the last 2 months' rent his actions were consistent with there being no rent due. The Tribunal considered that the Respondent's actions in returning the rent were wholly inconsistent with his explanation that rent was due.

Accordingly the Tribunal found that there were no rent arrears at the conclusion of the lease and the Respondent had unjustifiably withheld the deposit.

Failure to protect the deposit

The Tribunal accepted the Respondent's explanation as to why he had not protected the deposit. He was unaware of the requirement to do so.

It was clear that the tenancy deposit had not been protected in breach of the regulations. Having made those findings it then fell to the Tribunal to determine what sanction should be made in respect of the breaches. In so doing the Tribunal considered and referred to the case of ***Russell-Smith and others v Uchegbu [2016] SC EDIN 64***. The Tribunal considered what was a fair, proportionate and just sanction in the circumstances of the case always having regard to the purpose of the Regulations and the gravity of the breach. Each case will depend upon its own facts and in the end of the day the exercise by the Tribunal of its discretion is a balancing exercise.

The Tribunal weighed all the factors and found the following factors to be of significance:

- (a) The Respondent had been a landlord for around 12 years;
- (b) This was the Respondent's only letting Property;
- (c) The Respondent had used letting agents for 8 years prior to the tenancy with the Applicant;
- (d) The deposit had not been protected for the duration of the tenancy and had not been returned to the Applicant;
- (e) The Respondent had unjustifiably withheld the deposit.

The Tribunal consider and find that this was not a breach that could be said to have been at the lower end of the scale given the Respondent's experience and his reasons for withholding the deposit. Whilst he may have been unaware of the requirement for him to protect the deposit he should have taken steps to familiarise himself with his duties and obligations as a landlord. Nor could it be said this was a breach which should have been at the higher end of the scale as this was not a case where there had been repeated breaches.

In the circumstances the Tribunal considered the breach to be towards the middle end of the scale. The Tribunal considered the sum of £600 to be a fair, proportionate and just sanction in the circumstances of the case.

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.

Alan Strain

11 July 2025

Legal Member/Chair

Date