



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/23/3985

Re: Property at Weavers Cottage, Edrom, DUNS, TD11 3PX (“the Property”)

Parties:

Mr Jasper Peter Hardy, Allanbank Courtyard, Allanton, Duns, TD11 3PY (“the Applicant”)

Mr Gordon Drummond, Broomhouse, Duns, TD11 3PP (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent to the Applicant in the sum of £2200.00.

Background

1. By application dated 18 November 2023 the Applicant applied to the Tribunal for an order for payment in terms of regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”). The Applicant submitted a copy of a tenancy agreement, proof of payment of a deposit, and copies of text messages between the Respondent and the Applicant’s father.
2. By Notice of Acceptance dated 21 November 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 11 January 2024.

4. A CMD was held by teleconference on 26 February 2024. The Applicant attended in person supported by his father Dr Michael Hardy. The Respondent also attended in person. The Respondent advised the Tribunal that written representations had been submitted but it appeared these had not been circulated. The Respondent was asked to confirm his position in relation to this application verbally and he confirmed that he conceded that he did not lodge the deposit of £1,100 in a tenancy deposit scheme, due to oversight. He explained that there were mitigating circumstances regarding this, such as difficulties he encountered with the Applicant at the outset of the tenancy with returning the completed tenancy agreement documentation, etc. The Respondent stated that he had covered this side of things in quite a bit of detail in his written representations and would like the Tribunal to have sight of these before proceeding further. The Applicant stated that, as far he was concerned, the matter was clear-cut, as the Respondent had not lodged the deposit with a scheme. He referred to the supporting documentation lodged with his application and wished to point out that the Respondent had previously stated in his communications that the deposit was with Safe Deposits Scotland, which was therefore untrue. In the circumstances the Tribunal continued the application to a hearing.
5. A hearing took place by teleconference on 25 June 2024. The Applicant attended in person and was supported by his father. The Respondent also attended in person. As the Applicant had not received the Respondent's written representations the hearing was adjourned to a further hearing.

The Hearing

6. An in-person hearing was held at Dunbar Town House on 11 June 2025. The applicant attended in person supported by his father Dr Michael Hardy and the Respondent also attended in person supported by an assistant Ms Rachael Farrel.
7. The Applicant advised the Tribunal that he had never received the Respondent's written representations referred to at the previous hearing but that he did not wish this to prevent the hearing going ahead.
8. The Tribunal noted that it was accepted that the Applicant's deposit of £1100.00 had not been placed in an approved tenancy deposit scheme for the duration of the Applicant's tenancy. The Tribunal also noted from the Respondent's written submissions that this had been due to an oversight on the part of a former employee of the Respondent who had placed the Applicant's deposit in a safe over Christmas 2023 and had then omitted to follow up on the necessary paperwork on her return after the holidays. The Respondent advised the Tribunal that it had subsequently transpired that another employee who had been trusted by him had over a period of nine years been embezzling funds and that the Applicant's deposit had in fact not been retained but had been stolen by his employee who had then left his employment in 2023 and subsequently died. The Respondent advised the Tribunal that other tenants deposits had also not been placed in approved schemes and he was in the process ascertaining the full extent of the losses

but that it amounted to thousands of pounds. The Respondent acknowledged that the Tribunal was obliged to impose a sanction on him asked the Tribunal to consider his written representations in mitigation.

9. The Applicant submitted that by not placing the deposit in an approved scheme he had been deprived of an opportunity to make use of the scheme's arbitration service. The Applicant also referred the Tribunal to the exchange of text messages between the Respondent and his father submitted with the application.

Findings in Fact and Law

10. The Applicant commenced a Residential Tenancy of the property on 22 December 2021 that ended on 28 October 2023.
11. The Applicant paid a deposit of £1100.00 to the Applicant at the commencement of the tenancy.
12. The Respondent's employee Ms Przada placed the deposit in a safe over the 2021 Christmas holidays and on her return to work omitted to follow up the required paperwork to lodge the Applicant's deposit in an approved scheme.
13. Another employee of the Respondent embezzled the Applicants deposit and other funds from the Respondent.
14. The Applicant's deposit was never placed in an approved tenancy deposit scheme throughout his tenancy of the property.
15. The Applicant's tenancy ended on 28 October 2023.
16. The Applicant's application under Regulation 9 of the Regulations is timeous.
17. The parties were in dispute over the return of the whole of the Applicant's deposit due to damage caused by water ingress at the property.
18. The Applicant was denied the opportunity to make use of an approved scheme's arbitration service.
19. The Respondent is a professional landlord with about 65 rental properties.

Reasons for Decision

20. It was accepted by the Respondent that he was in breach of the Regulations by not protecting the Applicant's deposit in an approved scheme. It was also accepted that the application was timeous and that being the case the Tribunal was obliged to impose a financial sanction on the Respondent. The Tribunal considered what would be a fair, proportionate and just sanction in the circumstances of the case having due regard to the purpose of the Regulations

and the gravity of the breach. In reaching its decision the Tribunal weighed the various factors and took account of:

- (a) The Respondent is an experienced landlord with numerous other properties.
- (b) The Respondent relied on employees to carry out completion of paperwork and the lodging of the Applicant's deposit in an approved scheme
- (c) The deposit was not lodged in an approved scheme for the duration of the tenancy and the Applicant was deprived of the use of a scheme's arbitration service.

The Tribunal does not consider this to be a breach at the lower end of the scale given the Respondent's extensive experience of letting property. Although he delegated responsibility for the administration of tenants' deposits to employees that in no way absolves him of responsibility. Rather it stresses the importance of having in place appropriate checks to ensure that oversights such as has happened to the Applicant's deposit and apparently to others does not happen. However, it also cannot be said that this was a breach at the upper end of the scale as up until now the Respondent has not had multiple claims against him.

Decision

21. Having carefully considered the submissions on behalf of both parties the Tribunal is satisfied that the breach of the Regulations by the Respondent merits a sanction in the middle range of the scale open to the Tribunal. The Tribunal considers that the sum of £2200.00 to be a fair, proportionate and just sanction to impose 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.

Graham Harding

**Graham Harding
Legal Member/Chair**

**23 June 2025
Date**