



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 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/25/0574

Re: Property at 94 Hay Street, Perth, PH1 5HP (“the Property”)

Parties:

Mr Oliver Kelly, Flat 23 Wilkins Court, Deanfield Avenue, Henley on Thames, RG9 1UE (“the Applicant”)

Mrs Grace Sharkey, 7 Florence Place, Perth, PH1 5BH (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of £2200.00 be made in favour of the Applicant

1. Background

1.1 This is an application under rule 103 of the Chamber rules whereby the Applicant sought an order for payment in respect of an alleged failure by the Respondent to comply with their obligations under the 2011 Regulations. The application was accompanied by copies of the tenancy agreement between the parties, correspondence from the deposit schemes and verification of a bank transaction of the deposit being paid.

1.2 Both the Respondent and Applicant lodged representations in advance of the Case Management Discussion.

2. The Case Management Discussion

2.1 The Case Management Discussion took place on 4 August 2025 by teleconference. Both parties attended personally and were not represented.

2.2 The Tribunal heard firstly from the Applicant. He confirmed that a deposit of £1003.00 was paid in December 2020. The tenancy commenced on 22 December 2020. The deposit had been paid to an agent of the Respondent. Despite the tenancy agreement specifying £1450.00 as a deposit, only £1003.00 was requested by the agent with no reason being for the discrepancy. He did not hear anything further regarding the deposit until he submitted notice to end the tenancy in January 2025. He was then advised by the Respondent that she held the deposit. He did not take issue with the deduction of £100.00 proposed by the Respondent, having become aware of the potential breach of the 2011 Regulations and preferring to pursue the matter through the Tribunal.

2.3 The Respondent agreed that the tenancy commenced around 22 December 2020, although the tenants may have entered slightly earlier. She accepted a deposit of £1003.00. The deposit had been paid to Clyde Property, whom she employed as agents to the extent that they would find tenants for the property. The amount they took as a deposit was different from that specified on the lease. The deposit was then remitted to her in January 2021. She required to query the sum that had been remitted with her agents given the amount differed from the tenancy agreement. The deposit thereafter remained within her bank account. She only realised her oversight when the Applicant contacted her with notice. She advised that there had been a great degree of flux with the property, with the previous tenant vacating after only two weeks due to a change in circumstances. Clyde Property were only employed to handle applications from prospective tenants and did not provide advice and assistance with compliance with her duties in respect of deposits. The Respondent advanced the situation with regards to COVID-19 lockdowns at the time and the discrepancy over the sum received as causing difficulties to her as a landlord in that it took some time to confirm with the agent that this was the deposit. Given the time that had passed since the deposit was received, she did not insist on the higher sum being paid. The Respondent accepted that she had breached her obligations. She owned two rental properties and had never intended not to honour repayment. Documentation had been lodged demonstrating compliance with obligations in respect of other deposits.

2.4 The Applicant took no issue with the factual position advanced by the Respondent. Given the admission by the Respondent as to the nature of the breach, the Tribunal did not believe a hearing was necessary. The Tribunal indicated that a decision would be issued based on the papers and what was said at the Case Management Discussion.

3. Findings In Fact

3.1 The tenancy between the parties commenced on 22 December 2020.

3.2 A deposit of £1003.00 was paid to the Respondent's agent in connection with the tenancy.

- 3.3 The deposit paid was different to that specified by the tenancy deposit due to an error on the part of the Respondent's agent.
- 3.4 The deposit was remitted to the Respondent by her agents in January 2025.
- 3.5 The deposit was not lodged with an approved third party scheme and was held within the Respondent's bank account until repayment of the sum, less £100.00, was made to the Applicant, following the end of the tenancy agreement.
- 3.6 No information regarding the lodging of the deposit was given by the Respondent to the Applicant.
- 3.7 The tenancy between the parties ended on 8 January 2025.

4. Reasons For Decision

- 4.1 In terms of Regulation 3 of the 2011 Regulations, the Respondent was obliged to lodge the deposit with an approved third party scheme within 30 working days of the commencement of the tenancy and provide the Applicant with the information contained within Regulation 42. The Respondent had failed to lodge the deposit within the prescribed time frame or provide the prescribed information to the Applicant.
- 4.2 Regulation 10(a) of the 2011 Regulations requires the Tribunal to make an order for payment in favour of the Applicant where the Respondent has breached the aforementioned duties. In that, the Tribunal has no discretion. The discretion of the Tribunal is limited to the amount the Respondent must pay which must not exceed three times the deposit taken. The Tribunal could therefore make an order for an amount up to £3009.00.
- 4.3 The Tribunal approached the matter of the amount by following the Upper Tribunal's reasoning in *Ahmed v Russell* 2023 S.L.T. (Tr) 33. The order for payment was a sanction upon the Respondent, not compensation for the Applicant, and ought to reflect the level of overall culpability measured against the nature and extent of the breach. In the present case, the deposit had not been lodged at any point during the tenancy. It remained unprotected for in excess of four years, which the Tribunal considers a serious breach of the 2011 Regulations. Whilst the Tribunal accepts that the Respondent was operating under difficult circumstances in December 2020 and January 2021, she accepted that the agent had confirmed that the deposit had been remitted to her, although she did not receive advice from agents with regards to her duties. The circumstances in which she was operating were of limited excuse as to the failure to thereafter lodge the deposit. The Tribunal was mindful that the order for payment was a sanction and not meant to represent some windfall or compensation for the Applicant. The Tribunal considered that an order at the maximum level of that could be made, given the size of the deposit, would be disproportionate for what it considered to be an oversight, albeit one that resulted in a serious breach of the 2011 Regulations. The Tribunal therefore selected the sum

of £2200.00 as appropriate in the circumstances with the most significant factor being the length of time the deposit was unprotected.

- 4.4 The parties had lodged representations relating to the performance of other obligations under the tenancy agreement, including who had actually made payment of the deposit. The Tribunal placed no weight on these matters, given that they were not relevant to extent of the breach or culpability of the Respondent, given the circumstances. Further, the matter of who paid what proportion of the deposit was a matter for the tenants themselves. Their obligation to make payment of a deposit had been fulfilled and either, or both, tenants were entitled to bring the present application.

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.

Alastair Houston

Legal Member/Chair

7 August 2025
Date