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) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/25/1913

Re: Property at Flat 1, 168 Main Street, Prestwick, KA9 1PG ("the Property")

Parties:

Mr Paul Barilli, 11 McAdam Square, Ayr, KA8 0DA ("the Applicant")

Ms Lynsey Pollock, 211 Main Street, Prestwick, KA9 1LH ("the Respondent")

Tribunal Members:

Rory Cowan (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that (i) the Respondent failed to comply with Regulation 3(1)(a) and (b) of the Tenancy Deposit Schemes (Scotland) Regulations 2011; and (ii) that the sum of £787.50, was an appropriate sanction.

- Background

By Application under Rule 103 dated 6 May 2025 (the Application) the Applicant sought an order for payment against the Respondent for an alleged failure to pay a tenancy deposit into an approved scheme as well as a failure to issue prescribed information to him. In support of the Application, the Applicant produced various documents including a copy correspondence with the 3 approved tenancy deposit schemes confirming that the deposit was not lodged with any of the approved tenancy deposit schemes, copy bank information to confirm payment of the deposit and a copy of his Notice to Leave that had been served on him that lead to termination of the underlying lease.

- The Case Management Discussion

A Case Management Discussion (CMD) was fixed for 3 September 2025 to be heard by way of conference call along with another related application. The Application was

thereafter intimated to the Respondent by way of sheriff officers. No written response was received to the Application in advance of the CMD. At the CMD, the Applicant appeared along with his representative a Mr Tierney of Ayr Housing Aid Centre and the Respondent appeared and represented herself.

The Tribunal outlined the basis of the Application and the issues including the potential penalties for failure to comply with a landlord's duties under regulation 3 of Tenancy Deposit Schemes (Scotland) Regulations 2011 (the 2011 Regulations).

After discussion, the Respondent agreed that she had been paid the sum of £525 by way of a security deposit by the Applicant on or around 3 December 2021 and that she still held it. She confirmed that the tenancy had ended on 14 March 2025 when the Applicant vacated the Property in response to her notice to leave. She also confirmed that this deposit had not been paid into an approved tenancy deposit scheme and that she still held same and that it had not been returned to the Applicant.

When asked why the deposit had not been paid into an approved tenancy deposit scheme, the Respondent indicated that this was due to "ignorance" as, although it had been discussed with the Applicant at the time, she had done some "research" and taken from that research that the lodging of deposits was not mandatory as she had determined that "at the time not all landlords needed to lodge deposits". She stated that, although the question of the deposit being lodged was discussed, it had been "agreed" she would hold it in the bank account into which the rent had been paid. She confirmed she was registered as landlord and that the Property was the only or principal home of the Respondent and let to him as a Private Residential Tenancy. She therefore accepted that she had breached her obligations as a landlord in relation to the deposit under Regulation 3(1)(a) and (b) of the 2011 Regulations.

When asked why the deposit had not been returned to the Applicant, she explained that the Property had been cleared but she decided to have it deep cleaned at her choice. When doing so, it was found that the sink in the main bathroom was cracked and needed replaced. Although it needed replaced, she confirmed that she had not actually replaced same and had sold the Property and therefore had not and would not incur that cost. She then explained that she had received a large amount of correspondence as the "occupier/owner" of the Property relating to various debts that it was claimed belonged to the Applicant, such as council tax, utilities and television licensing. She acknowledged that these were debts that were due by the Applicant and that she had no liability to pay same. She did indicate that the electricity meter had been changed to a pre-payment meter without her consent and she incurred the sum of £60 to have that changed back as well as the sum of £40 to pay the negative balance on that meter.

The Applicant acknowledge that the meter had been change on his request and that there were certain debts accrued by him during his tenancy, some of which he had resolved and some of which he had not received much correspondence about. The Respondent indicated that dealing with such matters had been very stressful and resulted in extra legal costs due to the additional correspondence during the conveyancing process, but that it had been resolved, and the Property had been sold.

The Applicant's representative referred to emails issued by him and dated 13 March 2025 and 21 March 2025 that both referred return of the deposit. In response the Respondent indicated that she had called regarding the first email but only in relation to the arrangements for the Applicant vacating the Property but "did not recall" receiving the second email.

As the Respondent had, in effect admitted a breach of regulation 3 of the 2011 Regulations, the Respondent was invited to make representations about the question of any penalty that should be applied and the level of same. The position adopted was that her breach of the 2011 Regulations was due to "ignorance or oversight" and that the Applicant did "not deserve to be paid anything". She explained that the reason why the deposit was not repaid after the tenancy ended was down to the debts the Applicant had incurred at the Property and her dealing with same. Overall, she felt to award any penalty in these circumstances seed "very unfair". She stated that she had been a landlord for approximately 6 to 7 years. That she was no longer a landlord and that she had only ever let the Property. That she had only 1 tenant prior to the Applicant, but that she had not protected that deposit as she had not been aware of the obligation to do so. When asked what would have happened to the deposit had the Application and the related application not been raised, her response was that the deposit would "still be sitting there" by which she meant her bank account.

In response, Mr Tierney accepted on behalf of the Applicant that he had incurred debts whilst at the Property, but some had been resolved now, and others hew was not fully aware of due to a failure to receive correspondence that had been sent to the Property subsequent to him vacating. That said, Mr Tierney stated that any outstanding sums or balances due to creditors were for the Applicant to deal with. He stated that there had been no communication by the Respondent regarding the deposit, claims on same or in relation to its return. He made the point that, had the deposit been protected both parties would have had the benefit of independent mediation and adjudication, and the issues could have been resolved.

In terms of the level of penalty, he suggested than an appropriate sanction would be a sum equivalent to one and a half times the level of the deposit. He cited various aggravating factors supporting this view. These were

1) That the Respondent had admitted not lodging a deposit for a previous tenancy.
2) That she had registered as a landlord shortly before the Applicant's tenancy
3) That the question of securing the deposit with an approved scheme had been discussed with the Applicant prior to his tenancy.
4) That the deposit had been unprotected for a period in excess of 4 years and has still not been returned.
5) That she did not appear to accept that the non-return of the deposit was unjustified.
6) That she had been "truculent" over the question of return of the deposit.
7) That her failure to lodge the deposit was deliberate or reckless and he referred to the case of Rollet v Mackie 2019 UT 45.
8) The Respondent's denial of fault.

- Findings in Fact and Law

1) The Respondent was the heritable proprietor of Flat 1, 168 Main Street, Prestwick during the term of the Appicant's tenancy of same which commenced on 3 December 2021 and ended on 14 march 2025 .
2) The Respondent was the Applicant's landlord for the purpose of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
3) That, under the terms of the tenancy agreement, the Applicant paid to the Respondent the sum of £525 by way of security deposit on or around 3 December 2025.
4) That the security deposit of £525 was not paid into an approved tenancy deposit scheme and has been held by the Respodnent throughout.
5) That the Respondent therefore failed to comply with regulation 3(1)(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
6) That the Respondent did not issue the information to the Applicant as required by regulation 3(1)(b) and as prescribed by regulation 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
7) That the tenancy between the parties ended on 14 March 2025.
8) That on or around 3 December 2021, the Applicant discussed the securing of the deposit with an approved scheme with the Respondent, but after carrying out her own research she declined to do so and held it in her own bank account.
9) That the security deposit has not been repaid to the Applicant.
10) That the Respondent had some prior experience as a landlord.
11) That the Respondent has not lodge one deposit she received for a previous tenancy.
12) That the Applicant had requested that the electricity meter within the Property be changed to a pre-payment one but did not seek the Respondent's consent before doing so.
13) That the Respondent incurred costs of £100 associated with the removal of the pre-payment meter and installation of a new one.
14) That an appropriate penalty is a sum equivalent to £787.50.

- Reasons for Decision

The Respondent has not complied with her obligations under regulation 3(1)(a) and (b) of the 2011 Regulations. She was the Applicant's landlord for his tenancy at the Property even although she has now sold same. The issue therefore for the Tribunal in the face of an admitted breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 is to consider the level of the appropriate sanction. The level of such a penalty is a matter of discretion for the Tribunal taking into account the particular circumstances of the case when considering the approach to the level of the appropriate sanction (*Jensen v Fappiano [2015] 1WLUK 625*). It is a penalty for breach of the Regulations and not compensation for damage suffered (*Wood & Wood v Johnston UTS/AP/19/0023).* Cases involving more serious breaches of the 2011 Regulations will likely involve "repeated breaches against a number of tenants, fraudulent intention, deliberate or reckless failure to observe responsibilities, denial of fault, very high financial sums involved, actual losses caused to the tenant or other hypotheticals" (*Rollet v Mackie 2019 UT 45*).

The Tribunal therefore looked at the particular circumstances of this case with a view to determining the question of the level of the appropriate penalty. The Respondent admitted she had some prior experience of being a landlord, but it was limited. She indicated that she had only one prior tenant at the Property and had had no other properties she let. She indicated that in relation to that tenancy she had not lodged the deposit because she was unaware of the requirement to do so. That said, the Respondent did accept that the issue of lodging the deposit was raised by the Applicant and, after her own "research" she had decided not to lodge it because she was of the view she may not require to do so although her justification for that decision was not explained. Whilst ignorance of the requirement is no defence, it can act as a mitigatory factor of sorts, but the Tribunal was of the view that any mitigatory effect would be reduced by the requirement being brought to your attention and you deciding (wrongly and it would seem without the benefit of legal advice) that the duty may not apply to you. Whilst the Tribunal did not take the view that such an approach was deliberate, it comes painfully close to being reckless. Whilst it might be said the deposit was relatively modest, it was unprotected for the whole of the Applicants tenancy at the Property (a period of in excess of 4 years) and has not been returned to him as of the date of the CMD, some 6 months after the tenancy had ended. The related application that called alongside this one was one for a payment order in the amount of the deposit which was substantially agreed in the Applicant's favour. It was also telling that, when asked what would have happened to the deposit had the Applicant not raised these applications, her response was that it would "still be sitting" I her bank account. It could therefore be said that the Applicant has been denied the protection of the 2011 Regulations and, in particular the ability to seek adjudication of any claim the Respondent may have made on the deposit and, as a result, had to raise a claim via this tribunal for repayment of same (the very mischief the 2011 regulations were intended to guard against). Whilst there was an admission of some responsibility by the Applicant for costs associated with the electricity meter and an acknowledgment of likely issues around debts he incurred whilst at the Property (which were his responsibility not the Respondent's), these all were issues at the end of the tenancy and do not assist the Respondent in relation to her failure to lodge the deposit at the start an very little weight in terms of mitigation has been attached to them. Indeed, the Respondent's approach to the Application was not particularly apologetic and she sought to justify her failure to return the whole deposit due to her having to deal with correspondence from creditors of the Applicant, how that affected her and to minimise her failure to comply with the 2011 Regulations describing the prospect of any penalty in the circumstances as being "very unfair". The allegation of damage to the bathroom sink did not assist the Respondent either. Whether or not the sink was damaged is largely irrelevant as the Respondent incurred no costs or losses in relation to same as she sold the Property without repair and "sold as seen". There was no suggestion that the price she achieved for the Property was in any way affected.

For all these reasons the Tribunal reached the conclusion that whilst the non-compliance in this case was not entirely inadvertent it was at neither extreme of the spectrum of triviality. Taking this into account and all the circumstances of the Application and the Applicant's and Respondent's oral submissions, the Tribunal was of the view that this was an example of a case where the Respondent's culpability was in the middle of the scale. The main factors that the Tribunal relied upon in coming to that view were the fact that the duty under the 2011 Regulations were

raised with her prior to the tenancy commencing (but she decided not to comply), the amount of time the deposit was unprotected, the fact that even as at the date of the CMD the deposit had not been returned, and the Respondent's approach to the Application and her attempt to justify her failures by focusing on matters after the tenancy had ended. The appropriate sanction therefore would be to make an award by way of a penalty at the level of £787.50.

- Decision

The Tribunal orders that the Respondent pay to the Applicant the sum of £787.50.

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.

[redacted]

_____ _____3 September 2025_____
Legal Member/Chair Date