



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Procedure Regulations”) and The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/25/1690

Re: Property at Flat 18, 33 Windsor Place, Portobello, EH15 2BE (“the Property”)

Parties:

Miss Jodie Cox, 16 Lapwing Drive, Dunfermline, KY11 8RZ (“the Applicant”)

Harbour Lettings Ltd, 108 Constitution Street, Leith, Edinburgh, EH6 6AZ (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the sum of £250 should be made by the Respondent to the Applicant.

Background

1. By application received on 21 April 2025, the Applicant applied to the Tribunal for an order for payment against the Respondent in respect of failure to carry out their duties as landlord in relation to a tenancy deposit. The failure alleged was a failure to lodge the deposit within an approved scheme within the required time limit (30 working days) in terms of the 2011 Regulations. Supporting documentation was lodged in respect of the application, including information regarding the tenancy agreement, proof of payment of the deposit of £594.03 by the Applicant and confirmation from Safe Deposits Scotland that the tenancy deposit had been lodged on 21 December 2023. The tenancy had commenced on 18 October 2023 and ended in or around 6 April 2025.

2. Following initial procedure, on 9 May 2025, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. On 18 July 2025, a copy of the application papers and details of the Case Management Discussion (“CMD”) to take place were served on the Respondent by Sheriff Officer. Any written representations by the Respondent were to be lodged with the Tribunal by 7 August 2025.
4. On 7 August 2025, the Respondent lodged written representations, admitting the late lodging of the tenancy deposit, explaining it had been an administrative error and providing some mitigating circumstances and other comments. The representations were circulated to the Applicant in advance of the CMD.

Case Management Discussion

5. The CMD took place by telephone conference call on 25 August 2025 at 2pm. Both the Applicant, Miss Jodie Cox and representatives from the Respondent limited company were in attendance. The Respondent’s representatives were Mr Mark Hastie, Lettings Manager and Mr Dean Galloway, Private Rentals Officer, although Mr Hastie was the primary spokesperson.
6. Following introductions and introductory remarks by the Legal Member, Miss Cox confirmed that she had considered the terms of the representations from the Respondent. She stated that she was a little bit disappointed at their response. She clarified that she was not pursuing this application for monetary gain. She had just followed the guidance and advice provided by Safe Deposits Scotland at the end of her tenancy, when they informed her that the tenancy deposit had been lodged late by the Respondent. She was disappointed to find out about this from the scheme rather than from the Respondent themselves. She confirmed that she had never once complained about the Respondent throughout her tenancy and that she had received her deposit back very quickly at the end of her tenancy. She accepted that she had not suffered any financial losses but explained that the matter had impacted on her as it had put her on edge about renting again. Miss Cox was not pushing for the maximum sanction that the Tribunal can impose and stated that she was content to accept whatever sanction the Tribunal considered appropriate.
7. The Legal Member referred to the detailed written representations lodged by the Respondent and asked Mr Hastie to expand on these or add anything further, in view of what Miss Cox had stated. Mr Hastie confirmed that they had been disappointed to receive this application, given that they had had such a good landlord/tenant relationship with Miss Cox and considered that they had always been fair and flexible. He explained that they have only ever been involved with one other application at the Tribunal and that was to do with a rent increase issue, in which they were successful. They have a high tenant satisfaction record and strive to give tenants a positive experience. They fully accept that they had ‘slipped up’ here but, as explained in the written

representations, it was in no way deliberate and had been due to an administrative error. Essentially, the date that should have been entered onto their system was 21 November 2023, rather than 21 December 2023 so the deposit was transferred late to the deposit scheme. He explained that they are a small team and were going through a particularly busy period at that time, although are aware that this is not an excuse. He apologised for the error and said he understood Miss Cox's position and that the scheme were just doing their job in notifying her of the late lodging and her rights to make such an application to the Tribunal. They have since put in place measures that should ensure that this does not happen again. They now have a new software system in place and have also improved communication processes with their accounts team regarding notification that the deposits have been paid into the scheme. Mr Hastie stated that he does not think the scheme notifies landlords at the same time as they notify tenants, at the end of tenancies, as to late lodging of deposits. The first they were aware of their error here was when they received notification of Miss Cox's application to the Tribunal (in July). They will have issued the usual information to Miss Cox at the outset of the tenancy but obviously, the late lodging was not noticed at that time. [Miss Cox confirmed that she had received the prescribed information at the outset of the tenancy but had not picked up on the fact that the deposit had been lodged late]. Mr Hastie confirmed that they currently have a portfolio of 564 properties. He himself has 23 years letting experience and is well aware of the reason the tenancy deposit schemes were introduced in the first place, to try and regulate unscrupulous landlords, and he is in agreement that the regulations are a good thing to protect tenants. However, in the circumstances, he would ask the Tribunal to consider just making a nominal award of compensation, perhaps £100, given the relatively minor breach and the fact that there had been no financial impact on Miss Cox.

8. Miss Cox confirmed that she appreciated the apology from the Respondent, although thinks that £100 would be a bit low, given that there had been a clear breach of the tenancy deposit regulations.
9. The Legal Member stated that it was clear that there had been an admitted breach of the 2011 Regulations, albeit a fairly minor one, and that it would be her intention to make a finding in this regard and to impose a financial sanction, all in terms of the Regulations. It was explained that this would be on the lower end of the scale. The Legal Member confirmed that she would fully consider the representations made by both parties as to the appropriate sanction, as well as previous such cases and appeal decisions of the Upper Tribunal and would issue her written decision shortly, specifying the amount of the payment order and explaining the reasons for same. There was brief discussion regarding the appeal period, parties were thanked for their attendance and the CMD concluded.

Findings in Fact

1. The Respondent is the landlord of the Property.

2. The Applicant was the tenant of the Property by virtue of a Private Residential Tenancy commencing on 18 October 2023, which ended on or around 6 April 2025.
3. The Applicant paid to the Respondent a tenancy deposit of £594.03 at the outset of the tenancy, in accordance with the terms of the tenancy.
4. The Respondent lodged the deposit in a tenancy deposit scheme with Safe Deposits Scotland on 21 December 2023, just over three weeks late in terms of the 2011 Regulations.
5. The Applicant received the full tenancy deposit back at the end of the tenancy.
6. The Respondent admits the breach of the 2011 Regulations, but put forward mitigating circumstances.

Reasons for Decision

1. The application was in order and had been submitted timeously to the Tribunal in terms of Regulation 9(2) of the 2011 Regulations [as amended to bring these matters within the jurisdiction of the Tribunal], the relevant sections of which are as follows:-

“9.—(1) A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(b) may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to—

(i) pay the tenancy deposit to an approved scheme; or

(ii) provide the tenant with the information required under regulation 42.”

Regulation 3 [duties] referred to above, is as follows:-

“3.—(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—

(a) pay the deposit to the scheme administrator of an approved scheme; and

(b) provide the tenant with the information required under regulation 42.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

(a) in respect of which the landlord is a relevant person; and

(b) by virtue of which a house is occupied by an unconnected person,

unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.”

The Legal Member was satisfied from the documentation before her and the oral representations made at the CMD that the Respondent was under the duties outlined in Regulation 3 above and had failed to ensure that the deposit paid by the Applicant was paid into an approved tenancy deposit scheme within 30 working days of the start of the tenancy, contrary to Regulation 3 of the 2011 Regulations. This was admitted by the Respondent, as were the pertinent facts. The Legal Member was therefore satisfied that the application did not require to be continued to an Evidential Hearing and that, in terms of Regulation 10 above that a sanction must be imposed on the Respondent in respect of this breach of the 2011 Regulations.

2. In determining the appropriate amount of the sanction to be imposed on the Respondent for payment to the Applicant, the Legal Member considered all the background circumstances and the information received from both parties on the matter. The Legal Member considered that the amount of the sanction should reflect the gravity of the breach. The Respondent had requested leniency. The Applicant was content to leave the appropriate sanction to the Tribunal and accepted that the breach had been relatively minor. As the deposit here was £594.03, in terms of Regulation 10(a) above, the maximum possible sanction is £1,782.09. There is no minimum sanction stipulated in the 2011 Regulations.
3. The Legal Member considered the length of the tenancy and the good relationship between the parties throughout and that the deposit had been placed in the scheme around three weeks late [the Legal Member calculated that the 30 working days from the start date of the tenancy – which excludes weekends and public holidays – expired on 29 November 2023]. The Legal Member was satisfied from the written and oral representations from Mr Hastie that the late lodging had been due to a simple, administrative error and that there had been no intention not to comply with the Regulations. In the circumstances, the Legal Member considered this to be a minor breach of the 2011 Regulations. As the deposit had been placed in a scheme by the Respondent and was returned in full to the Applicant at the end of the tenancy,

the Legal Member accepted that there had not been any financial implications to the Applicant caused by the Respondent's breach of the 2011 Regulations. However, the Legal Member noted that Miss Cox had been disappointed to find out about the breach, at the end of what had otherwise been an amicable tenancy, and that it had appeared to unnerve her a little about renting property. The Legal Member also had regard to the statements made by Mr Hastie that the Respondent had a good track record as a landlord, high tenant satisfaction rates and had never previously had a Tribunal case found against them. It was apparent to the Legal Member that the Respondent did not take the matter lightly, had explained their error in detail as well as the systems they now have in place to avoid a similar error in future and had apologised for their error. Weighing all of these factors, the Legal Member determined that £250 was the appropriate amount of the sanction to be paid by the Respondent 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.

N Weir

Legal Member/Chair

25 August 2025
Date