



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 Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/25/0948

Re: Property at 20 Ivanhoe Road, Aberdeen, AB10 7EY (“the Property”)

Parties:

Ms Nandhinikumari Ramachandran, Mr Krishnakumar Balasubramanian, 101 Harrow Crescent, Romford, RM3 7BJ (“the Applicant”)

Mr Ray McNeill, Newfield of Muirtack Farmhouse, Auchleuchries, Ellon, Aberdeenshire, AB41 8EU (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has failed to comply with the duties in terms of regulation 3 of the Tenancy Deposit Schemes (Scotland Regulations 2011 to pay a tenancy deposit to the scheme administrator of an approved scheme within the prescribed time scale. The tribunal also determined that the information required to be given to the applicants in terms of regulation 3 within the same timescales had not been given to the applicants in this application. The tribunal made an order requiring the Respondent to pay the Applicants the sum of £450 by way of sanction for the breach of Regulations.

Background

1. This application for sanction of a landlord in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 was first received by the Tribunal on 1st March 2025 and accepted by the Tribunal on 13th March 2025. A case management discussion was fixed for 22nd August at 2pm.

Case Management Discussion

2.The Applicants attended the case management discussion, as did the Respondent and they represented themselves.

3.The Tribunal had sight of the application, a tenancy agreement, emails regarding the end of the tenancy, evidence of payment of the deposit, a redacted bank statement emails regarding the end of the tenancy, a screenshot, a tenancy deposit scheme notification regarding late payment of the deposit in to a scheme and written representations from each of the parties lodge shortly before the case management discussion along with check out photographs.

4.The parties had entered into a private residential tenancy at the property, a two-bedroom first floor flat with effect from 15th June 2023.The monthly rent payable was £550 per month. The Respondents lodged proof of payment of the deposit, and this was not disputed by the Respondent. The deposit paid was also £550 and this was paid out by the Applicant's bank on 5th June 2023.

5.The tenancy appeared to have ended on 15th February 2025, and the Tribunal had sight of email confirming this.

6.The Applicant Mr Balasubramanian had lodged a notification which had been received from Safe Deposits Scotland in 2025 which confirmed the end of the tenancy date and also that the deposit had been lodged with their Scheme on 26th January 2024, outwith the required time frame in the Regulations. This notification also explained to the Applicants how to lodge an application for sanction with the First Tier Tribunal which they did on 13th March 2025, within the statutory time limit for making such an application.

7. By means of written representations dated 14th July 2025 the Respondent accepted that he had paid the deposit into a tenancy deposit scheme later than required by the Regulations. At the case management discussion Mr McNeill accepted that he had not given the Applicants the required information regarding the tenancy also required in terms of Regulation 3 of the 2011 Regulations. They also confirmed they had not received this information.

8.Both parties had made representations in the weeks up to the case management date in which issues were raised which were in dispute. These included allegations of damage at the property, late payment of rent, the use of unprofessional or inappropriate language in communications or representations and inaccurate statements on these issues. The allegations were denied by both parties and did not appear to relate to the issues which the Tribunal required to deal with in terms of sanction in this application. The Tribunal determined that it would proceed without regard to these matters and neither of the parties raised any objection to this approach.

9. At the case management discussion Mr McNeill advised that he had returned the Respondent's deposit in full, sometime after the end of the tenancy and had permitted the tenancy deposit scheme provider to release it to them. It was accepted by the Applicants that they had received the deposit back, but their position was that they were due to receive all of it back anyway.

10. Mr McNeil advised the tribunal that he was the landlord of 14 properties, and up until 2 years previously he had been working full time, and an agency had managed his rentals for him. They dealt with the deposit schemes he said. He was now retired and had decided to take over some of the management and maintenance of the properties himself. He had provided the tenants with a letter confirming they had paid the deposit and believed it was sufficient, He had been online during the tenancy and had noted on a website that Regulations required that the deposit be put into a tenancy deposit scheme within 30 working days of the start of the tenancy. He said he had not been aware of this and didn't think it made any difference. He thought at that stage he better look for a scheme, and he decided to look for a new scheme as the one that his agents had used previously, he did not regard as being terribly fair in its approach. He paid the deposit into a scheme in January of 2024. He said that there had been no loss or no gain for him by the late protection of the deposit. He also indicated that as a gesture of good faith he decided to allow the entire deposit to go back to the tenants even although his view was that there had been damage to the property during the tenancy. He said this was an isolated mistake by him, he had never been in such a difficulty before, and he now understood what was required of him. He said that now the position was that he would put tenancy deposits received into the scheme within one or two days of receipt of them. He said that he knew he knew that the schemes existed and that deposits had to be paid into one of the approved schemes but didn't know of the time limit and said this had happened by chance. He had during the tribunal also accepted that he had not given the required information which was the second part of the duties referred to in Regulation 3 of the 2011 regulations.

11. The Applicants did not dispute that that deposit had been returned to them after the end of the tenancy but disputed all allegations made about damage caused during the tenancy and other assertions which they said were about their character and were false. As set out at paragraph 8 above these were not taken account of by the Tribunal as they were not directly relevant to the issues.

12. The Respondent having admitted the breach of the Regulations the Applicants were given an opportunity to address the Tribunal on the question of sanction, but they indicated that they would leave this to the Tribunal to decide.

13. The Respondent Mr McNeill having accepted the breach of the Regulations relied on his explanation but stressed this was a single mistake and it should be treated as such.

14. The Tribunal considered that it had sufficient information upon which a decision could be made and that the proceedings had been fair.

Findings in Fact

15. The parties entered into a private residential tenancy at the property with effect from 15th June 2023 and this agreement ended on 15th February 2025.

16. The tenancy was a relevant tenancy in terms of the tenancy Deposit Schemes (Scotland) Regulations 2011.

17. The tenancy agreement required the payment of a deposit of £550, and this was paid to the Respondent on 5th June 2023.

18. The Respondent did not pay the Applicants' deposit into an approved tenancy deposit scheme until 26 January 2024.

19. The Respondent did not give to the applicants at any time during the tenancy the information required in terms of Regulations 3 and 42 of the 2011 regulations.

20. The respondent has 14 different rented properties until two years ago he relied on agents to deal with deposits and maintenance and all matters to do with tenancies as he was working full time.

21. When the Respondent retired, he decided to take over maintenance and management of the rental properties himself.

22. The Respondent was not aware that the tenancy deposit paid by the applicants required to be protected within a certain time frame and when he became aware of the rules, he paid the deposit into a tenancy deposit scheme.

23. The Respondent was not aware of the requirement to give certain information to tenants regarding the tenancy and the deposit paid by them.

24. After the end of the tenancy the Respondent returned the full deposit to the applicants without any deductions.

25. Since this breach of the 2011 Regulations occurred the Respondent pays deposits into an approved scheme within one or two days of receiving them.

The Relevant Law

26. Rule 3(1) of the 2011 Regulations provides that "a landlord who has received the 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

27. A tenancy deposit is defined in the 2011 Regulations as having the meaning conferred by section 120(1) of the Housing Scotland Act 2006 ("the 2006 Act") which states :-

"A Tenancy deposit is a sum of money held as security for –

- (a) the performance of any of the occupant's obligations arising under or in connection with a tenancy or an occupancy arrangement, or
- (b) the discharge of any of the occupant's liabilities which so arise

Reasons for Decision

28. The tribunal considered what the appropriate sanction would be in the circumstances based on all of the evidence before it. When considering the appropriate level of sanction to be made in the circumstances the tribunal considered the need to proceed in a manner which is fair, proportionate and just having regard to the seriousness of the breach (Jensen v Fappiano 2015 GWD 4 – 89)

29, the tribunal noted the view expressed by Sheriff Ross in Rollet v Mackie [2019 UT 45] that the level of penalty should reflect the level of culpability involved. The tribunal considered whether there were aggravating factors which might result in an award at the most serious end of the scale as noted by sheriff Ross in Fappiano. In this case it was not apparent on the basis of the information before the tribunal that there was any malicious or fraudulent intention on the part of the Respondent in failing to protect the deposit on time or give the Applicants the required information under the Regulations.

30 It appeared that the Respondent having taken over the management of his tenancies was not fully aware of the requirements of a landlord in terms of the 2011 Regulations. Of course, he should have been aware of his obligations but when he realised, he did protect the deposit although it was a number of months late and he did not provide the required information to the applicants in breach of the regulations.

31. The deposit paid by the applicants was returned to them sometime after the end of the tenancy.

32 Taking all of these considerations into account the tribunal determined that an order at the maximum level was not appropriate this being an error on the part of the Respondent which had to an extent been rectified Mr McNeill appeared to know that the Regulations existed but did not know the detail of them. He now seemed to have understood what is required of him having had agents deal with these matters on his behalf previously. The tribunal considered it was inappropriate to make an order at the higher end of the scale in the light of the level of culpability involved. The tribunal made an order requiring the Respondent to pay to the Applicants the sum of £450, a sum slightly less than the deposit paid by the Applicants before the start of the tenancy.

Decision

The tribunal determined that the Respondent had failed to comply with the duties in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 to pay a tenancy deposit to the scheme administrator of an approved scheme within the prescribed time scale. The tribunal also determined that the information required to be given to the Applicants in terms of regulation 3 within the same timescales had not been given to the Applicants in this application. The tribunal made an order requiring the Respondent to pay the Applicants the sum of £450 by way of sanction for the breach of the Regulations.

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.

Valerie Bremner

Legal Member/Chair

22.8.25
Date