



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 and Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/CV/25/3043

Re: Property at G/L 35 Sharon Street, Dalry, KA24 5DT (“the Property”)

Parties:

Mrs Adeola Oshikoya, 41 Lochfield Road, Paisley, Renfrewshire, PA2 7RL (“the Applicant”)

Mr Joseph Fitzpatrick, 39 Inchconnachan Avenue, Balloch, Alexandria, G83 8JN (“the Respondent”)

Tribunal Members:

Andrew Upton (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that (i) the Respondent failed to comply with his duty in Regulation 3(1)(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011, (ii) an appropriate sanction is ONE THOUSAND AND FIFTY POUNDS (£1,050.00) STERLING, being a sum equal to three times the tenancy deposit, and makes a payment order in that sum, and (iii) the Respondent is liable to pay the sum of THREE HUNDRED AND FIFTY POUNDS (£350.00) STERLING to the Applicant.

Statement of Reasons

1. This Application called for its Case Management Discussion by teleconference call on 16 February 2026. The Applicant was present on the call. The Respondent was neither present nor represented.
2. In this Application the Applicant seeks two orders. Firstly, she seeks an order for payment by the Respondent of a sum equal to three times the tenancy

deposit paid by the Applicant to the Respondent as sanction for the Respondent's failure to lodge same with an approved administrator of a Tenancy Deposit Scheme. Secondly, she seeks return of her deposit. Her position is that she paid £1,050 at the start of her tenancy, of which £700 was payment of rent in advance for rent falling due on 30 December 2022 and 30 January 2023, and £350 was a tenancy deposit.

3. The Respondent has lodged written representations. In terms thereof, he claims that no deposit was paid by the Applicant. He claims that the Applicant paid £1,050 as payment of rent in advance. He claims that he does not take deposits from tenants for the Property. He says that the Property is a one-bedroom flat with low risk associated with it. He suggests that the Respondent made an overpayment of rent at the end of her tenancy of £175 which falls to be returned to her.
4. At the CMD the Applicant confirmed that she paid £1,050 in December 2022. She next paid rent on or around 27 February 2023. That was on the basis that she had paid two months' rent in advance plus a tenancy deposit of £350. The payment by her of £175 at the end of the Tenancy was to reflect that she was not liable for payment of a full month's rent due to when she gave notice to leave. The sum due is £350, which was the deposit. It was unprotected and sanction should follow.
5. In terms of Rule 17(4) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 the Tribunal may do anything at a CMD that it may do at a Hearing including make a decision. In terms of Rule 2 the Tribunal must have regard to the overriding objective to deal with proceedings justly when making a decision including the need to avoid unnecessary delay.
6. The Respondent has provided written representations. They clearly set out his position. He has chosen not to attend the CMD. In the circumstances the Tribunal is satisfied that it may make a decision without proceeding to a Hearing.
7. In terms of Regulation 2 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations"), "tenancy deposit" has the meaning conferred by section 120(1) of the Housing (Scotland) Act 2006 ("the 2006 Act"). In terms thereof:-

"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 occupants liabilities which so arise."
8. The Respondent's position is that the Applicant paid a sum to the Respondent as "rent in advance". The Tribunal considered that section 120 of the 2006 Act

is capable of including within the definition of “tenancy deposit” a sum paid in advance for rent in this case. That is on the basis that (i) rent falls due according to the tenancy agreement, (ii) clause 8 of the tenancy agreement provides that rent is to be paid monthly in advance, (iii) there is no obligation in the tenancy agreement to pay rent in advance for any period, and (iv) absent any alternative provision, any payment of “rent in advance” by the Applicant could only have been taken by the Respondent in security for performance by the Applicant of her future obligations to pay rent.

9. It follows from the above that the Tribunal was satisfied that the sum of £350 was paid by the Applicant to the Respondent at the commencement of the tenancy as a tenancy deposit.

10. In terms of the Regulations:-

“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.
- (2A) Where the landlord and the tenant agree that the tenancy deposit is to be paid in instalments, paragraphs (1) and (2) apply as if—
 - (a) the references to deposit were to each instalment of the deposit, and
 - (b) the reference to the beginning of the tenancy were to the date when any instalment of the deposit is received by the landlord.
- (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 [Antisocial Behaviour etc. (Scotland) Act 2004].

9.—

- (1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal 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 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 First-tier Tribunal —

- (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 First-tier Tribunal 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.”
11. The house types described in section 83(6) of the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”) do not include those let under Private Residential Tenancies. In terms of section 83(8), a “relevant person” means a person who is not a local authority, a registered social landlord or Scottish Homes, and an “unconnected person” is a person who is not a member of the relevant person’s family.
12. It follows from the above that the Respondent owed the duties set out in Regulation 3(1) of the Regulations. The Applicant founds only on the failure to comply with the duty in Regulation 3(1)(a), which is the duty to pay the deposit to an approved scheme administrator within 30 working days. There is no dispute that the Respondent did not do so.
13. In terms of Regulation 10, having been satisfied that the Respondent did not comply with his duty under Regulation 3(1)(a), the Tribunal must order the Respondent to make payment to the Applicant of an amount not exceeding three times the amount of the tenancy deposit. The purpose of Regulation 10 “is to penalise landlords to ensure they comply with the duty to protect and safeguard tenancy deposits” (*Pearson v Aird*, FTS/HPC/PR/22/3013). The only question for the Tribunal therefore is what an appropriate sanction would be in the circumstances.
14. The correct approach to determining an appropriate sanction under Regulation 10 was described by Sheriff Welsh QC in *Jenson v Fappiano*, an unreported decision from Edinburgh Sheriff Court dated 28 January 2015 (neutral reference 2015SCEDIN6). At paragraphs 11-12, Sheriff Welsh QC stated:-

“11. Non-compliance is admitted in this case, therefore the regulation is engaged. I consider regulation 10(a) to be permissive in the sense of setting

an upper limit and not mandatory in the sense of fixing a tariff. The regulation does not mean the award of an automatic triplication of the deposit, as a sanction. A system of automatic triplication would negate meaningful judicial assessment and control of the sanction. I accept that discretion is implied by the language used in regulation 10(a) but I do not accept the sheriff's discretion is 'unfettered'. In my judgment what is implied, is a judicial discretion and that is always constrained by a number of settled equitable principles.

1. Judicial discretion is not exercised at random, in an arbitrary, automatic or capricious manner. It is a rational act and the reasons supporting it must be sound and articulated in the particular judgment.
2. The result produced must not be disproportionate in the sense that trivial noncompliance cannot result in maximum sanction. There must be a judicial assay of the nature of the noncompliance in the circumstances of the case and a value attached thereto which sounds in sanction.
3. A decision based on judicial discretion must be fair and just ('*The Discretion of the Judge*' , Lord Justice Bingham, 5 Denning L.J. 27 1990).

12. Judicial discretion is informed and balanced by taking account of these factors within the particular circumstances of the case. The extent to which deterrence is an active factor in setting the sanction will vary (cf *Tenzin v Russell 2014 Hous. L.R. 17*). The judicial act, in my view, is not to implement Government policy but to impose a fair, proportionate and just sanction in the circumstances of the case.”

15. In this Application, the Tribunal notes that the deposit was paid in December 2022 and was unprotected for the full duration of the tenancy. The Respondent is unrepentant. The Respondent has claimed that a sum plainly paid as a security for performance is not a deposit. The Tribunal takes no view of whether that belief was genuinely held, but it was wrong regardless. The Respondent did not appear at the CMD to discuss the Application. Other than one brief email setting out his view, without reference to any authority, that the sum paid was not a tenancy deposit, he has not engaged in the Tribunal process. He has offered no other representations in mitigation of his breach of duty. In all of the circumstances, the Tribunal determined that this failure to comply is at the most serious end of the spectrum. The Tribunal therefore determined that the maximum sanction of three times the tenancy deposit should be awarded. The Tribunal ordered that the Respondent make payment to the Applicant in the sum of £1,050.
16. Finally, as regards the repayment of the deposit itself, the Respondent did not assert that the Applicant was in breach of any obligation under the tenancy agreement. That being the case, the Tribunal is satisfied that it ought to be

repaid as sought. The Respondent has not offered to prove any basis for its retention. The Tribunal therefore granted an order for payment by the Respondent to the Applicant of the sum of £350, being the tenancy deposit.

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.

Andrew Upton

Legal Member/Chair

16th February 2026
Date