



**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/18/0353

Re: Property at 1 Aspen Gate, Motherwell, ML1 5GW (“the Property”)

Parties:

**Mr Alan Timmins, Mrs Rosemarie Timmins, 36 Coney Drive, Motherwell, ML1
1AN; 36, Coney Drive, Motherwell, ML1 5GW (“the Applicants”)**

Ms Susan Coyle, 121 Quarry Street, Hamilton, ML3 7DR (“the Respondent”)

Tribunal Members:

Rory Cowan (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that: (1) Rosemarie Timmins of 36 Coney Drive, Motherwell ML1 5GW be added as a joint applicant; (2) the Respondent had failed to comply with regulation 3(1)(a) and (b) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (the Regulations); and (2) that the sum of £1,192.50 was an appropriate penalty; THEREFORE the Tribunal orders that the Respondent makes payment to the Applicants of the sum of £1,192.50.

- **Background**

In an application dated 24 January 2018 (the Application), the Applicants sought a penalty against their former landlord, the Respondent in terms of Regulation 9 of the Regulations. A Case Management Discussion originally took place on 28 January 2019, but was continued for the Applicants to confirm certain matters and to produce further evidence. Despite intimation upon her of the date of the CMD and that the Tribunal could deal with the Application in her absence, the Respondent was not in attendance at that CMD. The CMD was continued until 11 March 2019. Intimation of the outcome of the CMD on 28 February 2019 and of the further CMD on 11 March 2019 was made to the Respondent. The Respondent failed to appear or lodge any

responses to the Application. The Applicants were represented by Mr Clayson of the Lay Representation Project, Birnie House, Caird Street, Hamilton.

- The Case Management Discussion

Mr Clayson moved that the Application be amended to add Mrs Rosemarie Timmins as a joint Applicant. That application was granted and the Application was amended accordingly. He thereafter sought a penalty under the regulations of between one and a half to two times the level of the security deposit.

- Findings in Fact

The Tribunal makes the following findings in fact:-

- 1) That the Respondent held the landlord's interest in the Applicants' lease of 1 Aspen Gate, Motherwell ML1 5GW (the Property) between on or around 19 June 2014 until on or around 17 November 2017.
- 2) That the Applicants' tenancy for the Property commenced on or around 19 June 2014.
- 3) That in terms of the tenancy for the Property, the security deposit payable was £795.
- 4) That the Applicants paid the security deposit to the Respondent's letting agents Puffin Properties of 121 Quarry Street, Hamilton ML3 7DR on or around 12 June 2014.
- 5) That the security deposit was paid into an approved tenancy deposit scheme on 8 November 2016 by the said Puffin Properties.
- 6) That the prescribed information under Regulation 42 of the Regulations was not provided to the Applicants by or on behalf of the Respondent within 30 working days of 19 June 2014.
- 7) That the Applicants' tenancy for the Property ended on or around 17 November 2017.
- 8) That from the security deposit £445 was agreed/awarded to the Respondent and £350 was returned to the Applicants by MyDeposits Scotland, one of the approved tenancy deposit schemes.

FINDINGS IN FACT AND LAW

The Tribunal makes the following findings in fact and law:

- 1) That the Respondent failed to comply with Regulation 3(1)(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
- 2) That the Respondent failed to comply with Regulation 3(1)(b) of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

- Reasons for Decision

It was clear from the documentation produced on behalf of the Applicants that the security deposit for the Property had not been paid into an approved tenancy deposit scheme within 30 working days of the commencement of the tenancy. In fact, it

appeared that the security deposit was not paid into an approved tenancy deposit scheme until 2 years after the tenancy had commenced. Mr Clayson was unable to explain why this may have been the case other than to speculate that it may have related to the renewal of the Applicants' tenancy for the Property made on or around 20 July 2016. However, it was noted that, even if that was the case, the payment of the security deposit into the approved tenancy deposit scheme occurred on 8 November 2016, which would have been more than 30 working days from the commencement of the renewed tenancy in any event. Notwithstanding, it was clear that the security deposit was paid by the Applicants to the Respondents' letting agents (Puffin Properties) on or around 12 June 2014 for a tenancy that commenced on or around 19 June 2014.

Mr Clayson also submitted that no prescribed information as detailed in Regulation 42 of the Regulations had been provided to the Applicants within 30 working days of the commencement of the Applicants' tenancy. All they had received in relation to the protection of the deposit was the Deposit Protection Certificate from MyDeposits confirming protection of the security deposit on 8 November 2016.

The Tribunal therefore had no hesitation in forming the view that the Respondent had failed in her obligations to protect the security deposit and issue the prescribed information timeously. The Respondent was therefore in breach of Regulation 3 of the Regulations.

In terms of the Regulations, it having been established that the Respondent had failed to comply with the requirements of Regulation 3, the Tribunal is therefore required to proceed to order the Respondent to pay a sum, not exceeding three times the level of the security deposit, to the Applicants.

The appropriate approach to assessing the level of sanction was considered by Sheriff Welsh in *Jenson v Fappiano* [2015] 1 WLUK 625. In short, the Tribunal's discretion as to the level of sanction is unfettered. The wording of Regulation 10(a) is permissive and does not mean that in every case where there is a finding of breach by a landlord that the starting point is an award of three times the level of the security deposit. Something candidly and fairly accepted by Mr Clayson. Any sanction should be "fair, proportionate and just" having regards to the seriousness of the non-compliance.

In this case, whilst the deposit was unprotected for a period of 2 years, it was ultimately paid into an approved tenancy deposit scheme. The reason why payment was made at that point (8 November 2016) is unknown, but there was no suggestion that this was as a result of the Applicants raising the issue with the Respondent or her letting agents. It seems that this happened independent of any interaction with the Applicants. As such, the Applicants did, belatedly, receive the protection the Regulations were intended to convey. Indeed, Mr Clayson confirmed that ultimately part of the deposit (£445) was awarded to the Respondent and the balance paid to the Applicants.

The Tribunal was of the view that, whilst this was a serious breach of the Regulations, it was not the most serious breach. Again something fairly and candidly conceded by Mr Clayson. As indicated above, Mr Clayson therefore sought an order of between one and half to two times the level of the security deposit and referred

the Tribunal to the *Jensen* case mentioned above, mainly to contrast the circumstances of this Application and the circumstances in that case, where the Defender (as it was) had engaged in the court process. Whilst there was no such engagement in relation to this Application, the Tribunal can proceed based on the circumstances placed before it.

The Tribunal therefore, based on the circumstances placed before it, takes the view that, whilst a serious breach of the Regulations, the Respondent's failure could not be categorised as being at the most serious end of the scale of breaches and accordingly took the view that a fair, proportionate and just sanction in this case was £1,192.50 being a sum one and a half times the original security deposit.

- Decision

To order the Respondent to pay the Applicants the sum of £1,192.50.

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.

Mr Rory Cowan

Legal Member/Chair

Date

11 March 2019