



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 10 of the Tenancy Deposit
Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/18/0504

Re: Property at Flat 1/1 8 Townhead, Kirkintilloch, G66 1NL (“the Property”)

Parties:

Mr Samuel Roy Harris, Flat 4 No6 Thistle Street, Kirkintilloch, G66 1NU (“the Applicant”)

Mrs Margaret Monaghan, 16 Barhill Court, Kirkintilloch, GB66 3PL (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the deposit of £280 was not paid into a Tenancy Deposit Scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (the Regulations) and makes an order in terms of Section 10 of the Regulations:-

1. For payment of two times the deposit, namely £560.
2. And to pay the tenancy deposit of £280 into an approved scheme.

- **Background**

This was an application made by the applicant dated 23rd February 2018 for return of his deposit of £280 in respect of the Property and for a legal sanction for non-payment of the deposit into an approved scheme. At a Case Management Discussion held on 24th May 2018 the parties appeared and agreed that there was a lease of the Property between the Applicant and the Respondent and that the Tenant had prior to that rented another property from the Respondent’s husband Mr Hugh Monaghan, namely Flat 38G Townhead Kirkintilloch from 17th December 2015 to July 2016. The parties agreed the deposit originally paid for the first flat was £280 and not £380 as stated on the first lease. The parties also were not able to confirm

whether the deposit was ever lodged in an approved scheme and the case was continued to this hearing for clarification of whether the deposit had been lodged in an approved scheme.

The Tribunal had originally tried to write to the 3 tenancy deposit scheme providers but 2 of the providers would not respond and the Tribunal then directed both parties to write to the three approved scheme administrators for clarification.

The Hearing

At the hearing today Mr Harris appeared along with Mr Heath his representative from Citizen Advice Bureau and Mrs Monaghan was represented by her brother Mr Healy who had been formally nominated as her representative and the Tribunal had been advised the Respondent would not be present as she is on holiday.

The Legal Member invited everyone to introduce themselves and explained what the purpose of the Hearing was and went on to establish with both Mr Heath and Mr Healy what had been done to determine if the deposit had been lodged with a scheme. Safe Deposit Scotland had confirmed to the Tribunal that they did not hold a deposit and Mr Heath confirmed he had written confirmation from My Deposit Scotland that they had no deposit. He had not been able to obtain written confirmation from Letting Protection Service Scotland or verbal confirmation despite several phone calls yesterday. Mr Healy advised that Mrs Monaghan had phoned the 3 scheme providers and was advised the deposit had not been lodged. She did not request written confirmation. Mr Healy, therefore, confirmed and agreed, that the deposit was not paid into an approved scheme and the Tribunal went on to hear submissions regarding the amount of sanction that should be imposed for the failure to lodge the deposit.

Findings in Fact

1. The Applicant rented the Property from the Respondent from July 2016 until he left the property on 11th December 2017.
2. The Deposit of £280 was originally paid for the prior tenancy but the tenant was told it would be transferred to the new tenancy, this position was accepted by the Respondent and so the Tribunal accepted that the tenant had paid a deposit for the Property.
3. The Deposit has not been lodged with an approved scheme within the 30 days required in the Regulations.
4. The landlord of the Property is Mrs Monaghan and it was her responsibility to ensure the deposit was lodged in an approved scheme.
5. The deposit has not been repaid to the Applicant as the parties are in dispute over whether or not it should be returned.
6. Both parties agree the deposit should now be lodged in a tenancy deposit scheme so that they can present their arguments as to whom the deposit should be returned.
7. The Applicant has been disadvantaged by having to raise this application and has not been able to claim the return of his deposit through an approved scheme provider who can provide dispute resolution.

8. As the deposit has not been lodged in an approved scheme the Tribunal is obliged to order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit in terms of Section 10 of the Regulations.

Reasons for Decision

The deposit has not been repaid to the Applicant and is in dispute. The deposit should have been paid within 30 days of the tenancy commencing on 1st July 2016 so the deposit has not been in a scheme for 2 years. The Tribunal in considering what sanction to impose has a discretion to consider up to 3 times the amount of the deposit and has to look at and consider all the circumstances in coming to a decision. In doing so the Tribunal has considered the submissions of both parties.

The Applicant has had to raise this application, the case has had to be continued to allow verification of whether the deposit was lodged in a scheme causing more inconvenience to the Applicant. The Applicant also advised that the failure to get his deposit back has meant he had to borrow more money for his current deposit and has had to pay interest on it.

For the respondent Mr Healy advised that Mrs Monaghan had not had to deal with the letting of this house until her husband died in May 2016 and although she was the landlady on the lease she had not realised the full extent of her obligations in respect of lodging the deposit or ensuring it was lodged.

The tribunal noted the mitigating submission by Mr Healy that the Respondent was not wilful in her neglect of ensuring the deposit was placed in a scheme and that she had relied on her husband for a lot of the administration relating to the tenancy. However the Tribunal noted that it had been 2 years that the deposit had not been lodged, and several months since this matter was raised by the Applicant and his representative, and that the deposit was still not lodged in an approved scheme. This has deprived the tenant of his right to claim the return of the deposit and have any dispute over that resolved in the way provided for in the Regulations.

Taking all of the above into account the Tribunal felt an award to the higher end of the available sanction was appropriate and awarded 2 times the deposit of £280, namely an award of £560 to the Applicant.

In addition as both parties are in dispute over the return of the deposit it was agreed that the Tribunal should order that the deposit be lodged in an approved scheme within 28 days of the date hereof.

Order

- **That the Respondent pay to the Applicant the sum of £560 being two times the deposit**
- **The Respondent lodges within 28 days of the date hereof the sum of £280 being the deposit with an approved scheme and provide the**

Applicant with details of which scheme the deposit is lodged in and the date on which it was lodged.

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.

Jan Todd

Legal Member/Chair

Date 10th August 2018