



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 3,9 &10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”)**

**Chamber Ref: FTS/HPC/PR/21/0953**

**Re: Property at 69 Colinton Mains Grove, Edinburgh, EH13 9DG (“the Property”)**

**Parties:**

**Mr Aneirin Baker, Ms Kelsey Silberman, 12/1 Piershill Terrace, Edinburgh, EH8 7EU; 12/1 Piershill Terrace, Edinburgh, EH8 7EU (“the Applicants”)**

**Mr Dylan Mason, 69/5 Inverleithen Row, Edinburgh, EH3 5LT (“the Respondent”)**

**Tribunal Members:**

**Susan Christie (Legal Member)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order be granted for the Respondent to pay the sum of £1,150 to the Applicants.**

**Background**

1. The Applicants made the application to the Tribunal under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”). It was accepted on 11 May 2021 by the tribunal.
2. The application and associated paperwork were served on the Respondent by Sheriff Officer service on 27 May 2021 by letterbox mode. This included a letter dated 25 May 2021 from the tribunal intimating the date fixed for the Case Management Discussion.
3. A written response was due to be submitted by the Respondent by 15 June 2021. No written response was made.

**Case Management Discussion (CMD) -30 June 2021**

4. All Parties participated in the conference call. The Respondent did not recollect receiving the tribunal paperwork but did receive the letter. He explained his address had since changed but had not let the tribunal know his

new contact address. He was advised to intimate this in writing to the caseworker as soon as possible. In any event he confirmed that his e mail address that was shown in Part 46 of the tenancy agreement in the papers was his and could be used by the tribunal for intimation on him of the paperwork.

5. Given that the Respondent explained he was dyslexic and the uncertainty in his mind regarding receiving the paperwork, the application detail was read out to him along with the relevant details on the tenancy agreement, the termination of tenancy e mail and the paperwork around the lodging of the tenancy deposit with The LPS Scotland.
6. The Respondent did not dispute the content discussed and had no issue with continuing with the hearing today to a determination. He was given the opportunity to consider postponement but did not ask the tribunal to do that.
7. The following facts were agreed-
  - The Parties entered into a rental agreement over the Property.
  - The start date for the tenancy was 31 January 2020.
  - The rental agreement provided by the Respondent was not a recognised model tenancy agreement, notwithstanding that the tenancy had commenced after the Private Housing (Tenancies) (Scotland) Act 2016 came into force. It is however a private residential tenancy within the meaning of the Act.
  - A deposit was paid by the Applicants to the Respondent of £1,150 around 27 November 2019 for the Property rental.
  - The deposit was not paid into an approved tenancy deposit scheme until around 17 February 2021.
  - The tenancy ended by agreement around 31 March 2021.
  - The Applicants had asked for details of the tenancy deposit scheme from the Respondent around the time they wanted to give notice to end it.
  - The Deposit has been returned to the Applicants; less deductions decided upon through The LPS Scotland.
  - The Respondent's position is that he is a first time landlord and that he had bought the Property then printed off a tenancy agreement from the internet. He is a joiner by occupation and had worked on the Property which was made to a good standard. He was dyslexic and paperwork was not his strength. He had registered as a landlord though. He knew about fire safety requirements but was not familiar with the lodging of a deposit in an approved scheme. When he found out that he should have done this he did it. Prior to that the deposit lay in an account that he only used for the Property. He apologised for his error. He has a new tenant in the property and had immediately lodged the deposit in an approved scheme.
8. Having established that there has been a breach of regulation 3 of the regulations, I explained to the Parties that I needed to decide on the level of the sanction to be awarded.
9. I adjourned for a short time for me to consider the paperwork and the agreed facts, then resumed and advised the Parties verbally of my decision.

## Findings in Fact

- I. The Parties entered into a rental agreement over the Property.
- II. The start date for the tenancy was 31 January 2020.
- III. A private residential tenancy was entered into between the Parties for the Property.
- IV. A deposit was paid by the Applicants to the Respondent of £1,150 around 27 November 2019 for the Property rental.
- V. The deposit was not paid into an approved tenancy deposit scheme until around 17 February 2021.
- VI. The tenancy ended by agreement around 31 March 2021.
- VII. The original Deposit has since been returned to the Applicants; less deductions decided upon through The LPS Scotland.
- VIII. The Respondent is in breach of regulation 3 of the Regulations.
- IX. The tribunal orders the Respondent to pay the sum of £1,150 to the Applicants.

## 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.*

[

*(1A) Paragraph (1) does not apply—*

- (a) where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and*
- (b) the full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord,*  
*within 30 working days of the beginning of the tenancy.*

J1

*(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.*

J2

*(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.*

9.—

*(1) A tenant who has paid a tenancy deposit may apply to the [First-tier Tribunal]<sup>1</sup> 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 [...] <sup>2</sup> 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]<sup>1</sup> —*

*(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]<sup>1</sup> 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.*

## **Reasons for Decision**

The Regulations and the obligations flowing from that were discussed in detail with the Parties today.

The facts are sufficiently agreed to show that there had been a breach of regulation 3. I am therefore required to consider an appropriate level of the award as a sanction for non-compliance.

The Defender stated that he is a first time landlord and that he had bought the Property then printed off a tenancy agreement from the internet. He is a joiner by occupation and had worked on the property which was made to a good standard. He was dyslexic and paperwork was not his strength. He had registered as a landlord though. He knew about fire safety requirements but was not familiar with the lodging of a deposit in an approved scheme. When he found out that he should have done this he did it. Prior to that the deposit lay in an account that he only used for the Property. He apologised for his error. He has a new tenant in the property and had immediately lodged the deposit in an approved scheme.

I had to consider what amount my order was to be fixed at under regulation 10. In so doing I reflected on the facts specific to this application. I had regard to the fact that the deposit was at risk until the tenants had asked where it was held. This was around the time they were considering giving notice of termination.

I had regard to the terms of the Regulations and considered the approach taken in *Ross Cooper v Simon Marriot* [2016] Sc Edin 25; *Ross Fraser & Alison Pease v Andrew Meehan*, Edinburgh 29 August 2019, and *Russell-Smith 7 others v Uchegbu* [2016] Sc Edin 64. I also was mindful that each case is decided on the facts specific to it.

The sanction is intended to be a deterrent for those that do not comply with the tenancy deposit regulations. I had indicated to the Respondent that there were many

obligations on a landlord that he had to have regard to, the tenancy deposit regulations included. If he required assistance with paperwork, then he could secure an agent. He explained that he had since sought some advice.

I noted that the deposit refund was dealt with through the approved scheme at the end. The balance due was paid to the Applicants.

I am satisfied, having regard to the circumstances of this case and the terms of the Regulations that an Order for the Respondent to pay £1,150 should be made in this application. I consider this to be a proportionate and just sanction for the facts specific to this case.

### **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.**

Susan Christie

---

**Legal Member/Chair**

**30 June 2021**

**Date**