

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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

**Chamber Ref: FTS/HPC/PR/19/1124**

**Re: Property at 91 High Street, Dalbeattie, DG5 4BT (“the Property”)**

**Parties:**

**Mr Allan Morgan Ironmonger, Mrs Theresa Ironmonger, Stonehouse Farm,  
Castle Douglas Road, Crocketford, DG2 8QW; (“the Applicants”)**

**Mr David Reilly, Auchenglen, Kippford, DG5 4LG (“the Respondent”)**

**Tribunal Members:**

**Nairn Young (Legal Member) and Elizabeth Dickson (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that**

- Background

This is an application for an order sanctioning the Respondent for an alleged failure to pay a deposit into an approved scheme in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011(‘the Regulations’). It called for a hearing at 2pm on 2 October 2019. All parties were present in person.

- Relevant Law

The Regulations provide, at reg.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.

(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 [Antisocial Behaviour etc. (Scotland) Act 2004].

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.”

Regulations 9 and 10 read:

“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.”

So far as is relevant to this case, the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act') provides:

**"1 Meaning of private residential tenancy**

(1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

....

**44 No termination by parties except in accordance with this Part**

A tenancy which is a private residential tenancy may not be brought to an end by the landlord, the tenant, nor by any agreement between them, except in accordance with this Part.

...

**48 Tenant's ability to bring tenancy to an end**

(1) A tenant may bring to an end a tenancy which is a private residential tenancy by giving the landlord a notice which fulfils the requirements described in section 49.

(2) A tenancy comes to an end in accordance with subsection (1) on the day on which the notice states (in whatever terms) that it is to come to an end.

(3) But a tenancy does not come to an end in accordance with subsection (1) if—

(a) before the day mentioned in subsection (2), the tenant makes a request to the landlord to continue the tenancy after that day, and

(b) the landlord agrees to the request.

(4) In subsections (1) and (3), in a case where two or more persons jointly are the landlord under the tenancy, references to the landlord are to any of those persons.

**49 Requirements for notice to be given by tenant**

(1) A notice fulfils the requirements referred to in section 48(1) if—

(a) it is given—

(i) freely and without coercion of any kind,

(ii) after the tenant begins occupying the let property,

(b) it is in writing, and

(c) it states as the day on which the tenancy is to end a day that is after the last day of the minimum notice period.

...

(3) In subsection (1)(c), “the minimum notice period” means a period which—

(a) begins on the day the notice is received by the landlord, and

(b) ends on the day falling—

(i) such number of days after it begins as the landlord and tenant have validly agreed between them, or

(ii) if there is no such valid agreement, 28 days after it begins.

”  
...

- Findings in Fact

1. The Applicants entered into a tenancy agreement with the Respondent in regard to the Property, commencing 1 May 2018. This tenancy was a private residential tenancy, in terms of s.1 of the Act.
2. The Applicants paid a deposit of £750 at the commencement of the tenancy. The deposit was one to which the duties in reg.3 of the Regulations applied. The Respondent did not comply with those duties.
3. On 28 September 2018, the Applicants sent a letter by e-mail attachment to the Respondent. Among other things, the letter stated: “This is our letter to inform you of our intention to end our tenancy with you in regards Camley House, 91a High Street, Dalbeattie as of October 31<sup>st</sup> 2018.”
4. Following service of this letter on the Respondent, and prior to 31 October 2018, the Applicants changed their mind about leaving the Property, due to the property they were intending to move to no longer being available. The Respondent agreed that they could continue to stay at the Property. At some point before 29 October 2018, the Respondent sent a Facebook message to the Applicants stating: “... your lease termination letter brings you to this Wed 31<sup>st</sup> so need to confirm the condition of the property before the end of your

lease on the 31<sup>st</sup> before I can extend it.” On the morning of 1 November 2018, the Respondent sent a Facebook message to the Applicants stating: “Will drop in today to get the new lease signed, not sure of a time yet, probably late morning.” The Applicants replied, indicating their agreement. On the evening of the same day, the Respondent sent a further message, stating: “... will get over with the lease after dinner.” The Applicants again indicated their agreement to that. Later in the evening, the Respondent sent a Facebook message to the Applicants, stating: “... need you both to sign a lease, I am just printing it now but need it signed ASAP for insurance and legal reasons.” The Applicants again indicated their agreement.

5. The Applicants signed a new lease on 1 November 2018, commencing that day. It was on identical terms to the lease commencing 1 May 2018. In particular, on the signature page the following declaration appears:

“In signing this Agreement and taking entry to the Let Property, the Tenant confirms that he or she:

...

- read and understood all of the terms of this Agreement including the accompanying legal commentary.”

Rather than returning the deposit taken previously, the Respondent kept the money previously paid to him. On 16 November 2018, he paid the money into an approved deposit protection scheme (Safe Deposit Scotland).

6. The second tenancy came to an end on 8 March 2019. The Applicants occupied the Property throughout the period 1 May 2018 to 8 March 2019. This application was made on 10 April 2019.

- Reasons for Decision

7. The principal issue to be determined in this case is whether or not the Applicants brought their original tenancy of the Property to an end on 31 October 2018. If they did not, the parties accepted (in the opinion of the Tribunal, correctly) that their actions on 1 November 2018 would have no legal effect and that the original tenancy would have run until 8 March 2019. By the Respondent’s own admission, it would follow that he would have breached the terms of reg.3 of the Regulations, that this application would have been raised timeously, and that an order for sanction would have to be made against him.
8. As has been noted, however, the Tribunal considered that the first tenancy was brought to an end on 31 October 2018. The letter sent by the Applicants clearly fits the requirements of a notice under s.49 of the Act. The key question therefore is whether or not the parties cancelled the effect of that notice, by agreeing to continue the tenancy in existence, in terms of s.48(3) of the Act. In this regard, the Applicants pointed to the use of the word, “extend,”

in the Respondent's first Facebook message, as quoted above. The Tribunal did not consider that this could be taken as being an agreement to a continuation of the first lease on the part of the Respondent. To the extent that the word could be taken to carry such a meaning, it is clear from the message that any extension is not at that point being agreed by the Respondent, but is, at least, contingent on a satisfactory inspection of the Property. There was no evidence presented by the Applicants that agreement following such an inspection was forthcoming. Rather, the further messages from the Respondent quoted above, and the Applicants' agreement with their terms, make clear that the intention of the parties was to create a new lease, albeit on the same terms as the previous one.

9. The Applicants also contended that they were not provided with a full copy of the second lease and that they were given just a sheet of paper to sign by the Respondent, late at night, doing so in confusion and desperation. On the balance of probabilities, the Tribunal preferred the Respondent's position that the full lease terms were provided and the second lease properly executed on 1 November 2018. The Tribunal considered that the content of the Respondent's Facebook messages, which referred to his printing a new lease out and bringing it to the Applicants; the fact that the Applicants had both signed a lease in relation to the Property previously, and therefore would have been aware of what the Respondent meant when referring to such a document; and, most tellingly, the terms of the declaration found on the same page as the Applicants' signatures, as quoted above; all supported the Respondent's version of events.
10. The necessary conclusion on the facts as found is that, while the Applicants may have had a claim against the Respondent in relation to his failure to deal properly with the deposit under the first lease, any such claim was out of time at the point that this application was made, in terms of reg.9(2) of the Regulations. The Applicants (correctly) accepted that, if the Tribunal found that a second lease had been created on 1 November 2018, there was no basis for any claim in relation to the Respondent's handling of the deposit under that lease. The application therefore falls to be refused.

- Decision

Application refused.

## **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.**

**Nairn Young**

**Legal Member/Chair**

**8th October 2019**

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**Date**