

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/PR/19/1554

Re: Property at 3 Maryfield Place, Edinburgh, EH7 5AU (“the Property”)

Parties:

Miss Danielle Lucia Muchmore, Mr Thomas Steventon, 34 Polton Drive, Lasswade, EH18 1BT (“the Applicants”)

Mr Norman Johnson, whose current whereabouts are unknown (“the Respondent”)

Tribunal Members:

G McWilliams (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £1380.00 in terms of Regulation 10 (a) of the 2011 Regulations should be made.

Background

1. This Application, dated 20th May 2019, was brought in terms of Rule 103 (Application for order of payment where Landlord has not paid the deposit into an approved scheme) of the First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the 2017 Regulations”).

Case Management Discussion

2. A Case Management Discussion ("CMD") was held on 5th September 2019 at George House, 126 George Street, Edinburgh EH2 4HH. The Applicants attended. The Respondent did not attend and was not represented.
3. At the CMD, the Applicants produced copies of documents from the three organisations who administer approved deposit schemes, Letting Protection Service Scotland, Safe Deposits Scotland and My Deposits Scotland. The documents confirmed that the Respondent had not lodged it was established that the Respondent had not complied with the duty set out in Regulation 3(1) of the 2011 Regulations, in that he had not paid the Applicant's tenancy deposit, of £695.00, into an approved scheme following the commencement of the tenancy in April 2014.

Reasons for Decision

4. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations") provides that the Tribunal may do anything at a CMD which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all of the information and documentation it required and that it would determine the application.
5. The Application was brought timeously in terms of regulation 9(2) of the 2011 Regulations.
6. Regulation 3 of the 2011 Regulations (which came into force on 7th March 2011) provides as follows:
"(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."
7. The Respondent, as landlord, was required to pay the deposit into an approved scheme. This had not been done.
8. Regulation 10 of the 2011 Regulations provides as follows:

"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.”

9. The Tribunal, being satisfied that the Respondent did not comply with his duty under Regulation 3, accordingly had to order the Respondent to pay the Applicant an amount not exceeding three times the amount of the tenancy deposit.
10. In the case of *Jenson v Fappiano* 2015 G.W.D 4-89, Sheriff Welsh, in relation to Regulation 10(a) of the 2011 Regulations, was of the opinion that there had to be a judicial analysis of the nature of the non-compliance in the circumstances of the case and a value attached to reflect a sanction which was fair, proportionate and just given those circumstances. Sheriff Welsh was of the opinion that, when determining the sanction value, the starting point was not the maximum award to be discounted by mitigating factors. He considered that this would be inconsistent with the exercise of balanced, judicial discretion.
11. In the case of *Tenzin v Russell* 2015 Hous. L. R. 11, the Court of Session reiterated that the amount of any payment in terms of Regulation 10(a) of the 2011 Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.
12. In determining a fair, proportionate and just sanction in the circumstances of this Application, the Tribunal considered and weighed all of the evidence and factors. The tenancy duration was almost five years. The deposit of £695.00 was paid on 28th March 2014. The Respondent had not at any time lodged the deposit in an approved scheme. The Respondent had not made any representations to the Tribunal. The Tribunal were not aware of any previous Applications concerning the Respondent.
13. Having exercised their judicial discretion, the Tribunal found, on a balance of probabilities, that the sum of £1390.00, being twice the amount of the tenancy deposit, was an appropriate sanction to impose. The Tribunal found that this sum fairly, proportionately and justly reflected a sanction in respect of the Respondent's non-compliance with the Regulations. Accordingly the Tribunal determined that an order for payment by the Respondent to the Applicant of the sum of £1390.00 in terms of Regulation 10(a) of the 2011 Regulations, should be made.

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.

G McWilliams

5th September 2019

Legal Member