



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit  
Scheme (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/19/1654**

**Re: Property at 67 Blarmore Avenue, Inverness, IV3 8QT (“the Property”)**

**Parties:**

**Mr Shaun Cameron and Ms Paulina Rylzkowska, both residing at 67 Blarmore Avenue, Inverness, IV3 8QT (“the Applicant”)**

**Ms Beverley Morrison, Dalnacrieve Altass, Lairg, Sutherland, IV27 4EU (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the Respondent in the sum of One thousand one hundred and twenty pounds (£1120) Sterling.**

**Background**

- 1 By application dated 24 May 2019 the Applicants sought an order for payment as a result of the Respondent's failure to lodge their deposit in an approved tenancy deposit scheme.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 13<sup>th</sup> November 2019.

## **The First Case Management Discussion**

- 3 The Case Management Discussion took place on 13<sup>th</sup> November 2019. The Applicants were not present, but represented by Ms Estelle Kerr of the Inverness Citizens Advice Bureau ("CAB"). The Respondent was present. Ms Kerr confirmed that the Applicants sought a sanction of three times the tenancy deposit, as allowed for in the Regulations. The Respondent advised that the Applicants had agreed that she would retain the deposit in order that it could be returned swiftly at the end of the tenancy. The Respondent confirmed she was aware of the tenancy deposit scheme but had not looked into it at the start of the tenancy. She had two properties, but had not taken deposits for the other property as she knew the tenants. She advised that she had no intention to retain the deposit without good reason and did not intend any malice in not lodging it with a scheme.
- 4 The Legal Member noted the following facts to be agreed between the parties:-
  - 4.1 The parties entered into a private residential tenancy which commenced on 20<sup>th</sup> January 2019;
  - 4.2 The Applicants made payment of a tenancy deposit of £560 on 13<sup>th</sup> January 2019;
  - 4.3 The Applicants vacated the property on 9<sup>th</sup> June 2019;
  - 4.4 The tenancy deposit was not lodged in a tenancy deposit scheme;
  - 4.5 The Respondent has breached Regulation 3.
- 5 Having found the above facts to be agreed, the Legal Member noted the issue to be resolved as "*what level of sanction should be awarded to the Applicants in respect of the Respondent's breach of the Regulations*".
- 6 The Legal Member noted that the Respondent wished to take advice on her position. Another case involving the same parties had called before the Tribunal and had been continued to a further Case Management Discussion, therefore it was felt appropriate that this matter should also be adjourned.

## **The Second Case Management Discussion**

- 7 The Second Case Management Discussion took place on 7<sup>th</sup> January 2020. Ms Kerr appeared again on behalf of the Applicants. The Respondent was present. She advised that she had taken the opportunity to look into the duties under the Regulations and was aware of her position in that regard.

- 7 The Legal Member then heard submissions from the parties regarding the level of sanction. The Respondent admitted she hadn't registered with the scheme. She explained that the Applicants were happy that she retained the deposit. She thinks they have been unfair given that she had been accommodating to them at the start of the tenancy, giving them six months. The Respondent explained that she rented out another property, but that was to a friend and she hadn't taken a deposit as a result. However she didn't know the Applicants so she had taken a deposit in their case. The Respondent explained that she had looked into the tenancy deposit scheme at the time, but never got the forms filled in. Mrs Morrison explained that she had also found this to be a stressful situation.
- 8 Ms Kerr then addressed the Tribunal on behalf of the Applicants. She advised that they considered the maximum level of sanction should be awarded. On occasion they had found themselves having to call the Police as they felt in danger and their health had been affected by mould in the property. The Applicants felt they had been open with Respondent however there was no common ground to be found. They had hoped the Respondent would have made their deposit safe so they could have claimed that back at end of tenancy. The situation had caused them significant stress and anxiety.

### **Reasons for Decision**

- 9 The Tribunal determined the application having regard to the application paperwork, the written representations from the parties and the verbal submissions at the two Case Management Discussions. The Tribunal was satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. It was noted that the substantive facts of the matter were agreed.
- 10 The Tribunal noted that the relationship between the parties had broken down towards the end of the tenancy. Both parties were making allegations against the other and raising issues that were not relevant to the Tribunal's determination of the application. The Tribunal wished to stress that its sole focus in terms of determining the application was the circumstances surrounding the tenancy deposit.
- 11 The 2011 Regulations specify clear duties which are incumbent on landlords in relation to tenancy deposits. Regulation 3 requires a landlord to pay any deposit received in relation to a relevant tenancy to an approved tenancy deposit scheme within thirty working days of the beginning of the tenancy. The

deposit must then be held by the scheme until it can be repaid in accordance with the requirements of the Regulations following the end of the tenancy.

- 12 It was a matter of agreement between the parties that the Applicants had paid a deposit of £560 to the Respondent at the start of the tenancy, and that the Respondent had not paid the deposit into an approved tenancy deposit scheme. The Respondent was therefore in breach of Regulation 3.
- 13 Regulation 9 provides that any tenant may apply to the Tribunal for an order where the landlord has not complied with the duty under regulation 3. Further, under Regulation 10 in the event of a failure to comply, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. Accordingly having been satisfied that the Respondent had failed to comply, the Tribunal then had to consider what sanction to impose having regard to the particular facts and circumstances of the case.
- 14 The Tribunal considered the requirement to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach. In doing so the Tribunal took into account the fact that the deposit had remained unprotected for the entire term of the tenancy and the Applicants had been denied access to the independent dispute resolution process that would have been available had the deposit been lodged with a tenancy deposit scheme. Instead, the Respondent had been the sole arbiter in determining what sums, if any, should be returned. She had chosen to retain the entirety of the deposit.
- 15 It was not the role of the Tribunal in this particular application to make a determination as to whether the Respondent was entitled to retain the deposit. The Tribunal had to consider the primary aims of the tenancy deposit regulations, not least of which was the benefit of a free and impartial adjudication process at the end of the tenancy which had not been afforded to the Respondents in this case. Regardless of whether or not the Respondent was entitled to retain the deposit, it should have been lodged with a scheme.
- 16 The Tribunal also took into account the fact that the Respondent had been aware of the existence of the tenancy deposit scheme at the start of the tenancy but had chosen not to give any further consideration to what duties she may have as a landlord under the statutory regime. The Tribunal did not consider it satisfactory to suggest that the Respondent was able to absolve herself of any responsibility on the basis that the Applicants had purportedly agreed to her retaining the deposit. It is a Landlord's obligation to ensure that they abide by their obligations under the Regulations. The Respondent had a duty to ensure she understood her obligations under same and to ensure she had complied, however she had failed to do so. The Tribunal did however

note that the Respondent had admitted the breach and had been upfront and candid in her submissions before the Tribunal.

- 17 The Tribunal noted the purpose of Regulation 10, namely to penalise landlords to ensure they comply with the duty to protect and safeguard tenancy deposits. The provisions of Regulation 10 left no discretion where a landlord is found to have failed to comply and permitted an award of up to three times the deposit where a finding of breach is made. Balancing the competing factors in the particular facts and circumstances of this case, the Tribunal considered that a sanction in the sum of £1120 would be appropriate, being twice the deposit.
- 18 For the avoidance of doubt, the Tribunal did not take into account any allegations relating to the personal finances of the Applicants, nor the condition of the property either prior to or at the termination of the lease which was the subject of a separate application before the Tribunal. The Tribunal did not consider either to be a relevant consideration in its determination of the matter before it.

### **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.**

R. O'Hare

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**Legal Member/Chair**

7/1/20  
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**Date**