



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

Chamber Ref: FTS/HPC/PR/20/1837

**Re: Property at 70/1 Thirlestane Rd, Marchmont, Edinburgh, EH9 1AR (“the
Property”)**

Parties:

Miss Ella Cheney, Miss Lucy Reddiford, Miss Maya Stewart-Rizza, Mr Toby Kirkpatrick, 24 1f2 Melville Terrace, Edinburgh, EH9 1LR; 24 1f2 Melville Terrace, Edinburgh, EH9 1LR; 28/2 Sciennes Rd, Edinburgh, EH9 1NX; 7/7 Marchmont St, Edinburgh, EH9 1EL (“the Applicants”)

Mr Alex Pelling, care of Southside Property Management, 20 Nicholson St, Edinburgh, EH8 9DH (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member)

Decision

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

- Background

This is an application for an order for payment as a sanction against the Respondent, on the basis of an alleged failure to carry out duties incumbent on him under the Tenancy Deposit Schemes (Scotland) Regulations 2011. It called for a case management discussion (‘CMD’) at 2pm on 24 November 2020 by teleconference. The first named applicant phoned in in person and represented the remaining applicants. The Respondent was represented by Mr Andrew Anderson of Southside Property Management.

- Findings in Fact

The relevant factual background to this application was not in dispute between the parties, as follows:

1. The property was originally let to four third parties in terms of a private residential tenancy agreement, with a start date of 7 September 2018.
2. In terms of that agreement, the third parties paid the respondent a deposit of £2,300, which was secured with an approved tenancy deposit scheme ('the Scheme') on 6 February 2018.
3. The tenants' interest in the tenancy agreement was assigned to the Applicants on 6 June 2019.
4. The Applicants paid between them the total of £2,300 to the third parties between 20 and 27 May 2019, in exchange for acceding to their rights to the original deposit.
5. As part of the assignation process, the Respondent undertook to inform the Scheme of the change in the tenants under the tenancy agreement. No time-limit was agreed between the parties as to when this notification should take place.
6. The Respondent did not notify the Scheme until 23 April 2020.
7. The deposit was returned to the Applicants in full on various dates between 4 August and 8 October 2020.

- Reasons for Decision

8. The relevant legislation in relation to this application is from the Tenancy Deposit Schemes (Scotland) Regulations 2011 ('the Regulations').

Regulation 3 states (so far as is relevant):

“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. ...”

Regulations 9 and 10 state (again, so far as relevant to this case):

“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.

...

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.”

9. It is clear from regulations 9 and 10 that an order for sanction can only follow a finding that there has been a breach of the landlord's duties set out in regulation 3.

10. Those duties become active when a landlord receives a tenancy deposit (reg.3(1)). On receipt of the deposit paid by the third parties in this case, the Respondent complied with his duties. The current Applicants did not make any payment to the Respondent that could be classified as a deposit, so no further duty arose under regulation 3. In particular, there is nothing in regulation 3 imposing a duty to inform an approved scheme about an assignation of the tenant's rights under the tenancy.

11. The Applicants contended that, by the Respondent not informing the scheme of the assignation, the deposit had in effect ceased to be protected. The Respondent's only duty under the Regulations in that regard was to ensure that the deposit that had been paid by the third parties continued to be held by an approved scheme until it was repaid (reg.3(2)). That duty was complied with.

- 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.

30 November 2020

Legal Member/Chair

Date