

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 Regulation 9 of the Tenancy Deposit
Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/19/2527

Re: Property at 69 Cartmore Road, Lochgelly, Fife, KY5 9PA ("the Property")

Parties:

**Mr Jordan Allen, Mrs Nicole Allen, 24 Loanhead Avenue, Lochore, Lochgelly,
Fife, KY5 8DB ("the Applicant")**

**Ms Ann Belton, 90 Auchterderran Road, Lochgelly, Fife, KY5 9DJ ("the
Respondent")**

Tribunal Members:

Graham Harding (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that an order for payment of the sum of £950.00 in terms
of Regulation 10(a) of the Tenancy Deposit Schemes (Scotland) Regulations
2011 ("the 2011 Regulations") should be made.**

Background

1. By application dated 13 August 2019 the Applicants applied to the Tribunal for an order under Regulation 9 of the 2011 Regulations and rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Rules").
2. The Applicants provided the Tribunal with a copy of a Tenancy Agreement, a points assessment from Fife Council, email to Letting Protection Scotland and correspondence regarding termination of tenancy.

3. Following further correspondence between the Tribunal and the Applicants ,on 19 September 2019 a legal member with delegated powers accepted the application and a Case Management Discussion was assigned.
4. Intimation of the Case Management Discussion was sent to the Applicants by Recorded Delivery post on 2 October 2019 and was given to the Respondent by Sheriff Officers on 4 October 2019.
5. The Respondent submitted written representations to the Applicants by correspondence dated 13 October 2019.
6. The Applicants submitted further written submissions to the Tribunal by email dated 5 November 2019.

The Case Management Discussion

7. A Case Management Discussion was held at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy on 6 November 2019. Both parties were in attendance. The Applicants were supported by Mr Paul Clemin and the Respondent was supported by Mr Tony Schiavone.
8. It was agreed by the parties that the Applicants had paid a deposit of £475.00 at the commencement of the tenancy in February 2011.
9. The Respondent explained to the Tribunal that sometime in 2012 Mrs Allen had asked her about the deposit as she had heard about the Tenancy Deposit Scheme. The Respondent said she had "googled" the scheme and obtained a number to call. The person she had spoken to had been ambiguous and she had thought that as the deposit had been paid to her before the regulations coming into force she did not have to lodge the deposit in a scheme. The Tribunal referred the Respondent to Regulation 47 of the 2011 Regulations. The Respondent confirmed she had been unaware of the terms of Regulation 47. She had sought advice from a solicitor in May this year when the Applicants had brought the deposit issue to her attention and had been made aware that she should have lodged the deposit in an approved scheme.
10. In response to a query from the Tribunal as to why on being made aware of her duty to lodge the deposit at that stage she had still not put the deposit into an approved scheme the Respondent said that she thought that by that time it was too late.
11. The Respondent confirmed that she had kept the Applicant's deposit in her bank account throughout the period of the applicants tenancy of the property from February 2011 until May 2019 some eight years. The Tribunal pointed out to the Respondent that the latest date by which the deposit ought to have been lodged would have been 9 months after the coming into force of the regulations in December 2012 and depending on the terms of the tenancy agreement could have been earlier. The Respondent accepted that this was

the case. The Respondent submitted that she would never have interfered with the Applicants' funds and they would always have been there for them.

12. The Respondent confirmed that she had renewed the tenancy agreement with the Applicants each year by providing a new Short Assured Tenancy Agreement for 12 months. Despite this she had not thought to lodge the deposit in an approved scheme within 30 working days of any renewal.
13. The Respondent confirmed that she had been a registered landlord since February 2011 and had renewed her registration on one occasion but had in May 2019 cancelled her registration and the property had now been sold with new owners taking entry on 25 October 2019. The Respondent confirmed she had no other let properties.
14. The Respondent acknowledged that she was in breach of Regulation 3 of the 2011 Regulations and that as a result the Tribunal was obliged in terms of Regulation 10 to make an order against her by awarding the Applicants up to three times the deposit.
15. The Applicants confirmed that they accepted that any award was at the discretion of the Tribunal although in their application they were seeking the maximum award of three times the deposit.

Findings in Fact

16. The Applicants paid a deposit of £475.00 to the Respondent at the commencement of their lease of the property in May 2011.
17. The Respondent failed to lodge the Deposit in an approved Tenancy Deposit Scheme in compliance with Regulations 3 and 47 of the 2011 Regulations.
18. The Respondent failed to lodge the deposit in an approved scheme after becoming aware of her duty to do so in May 2015.
19. The Respondent let out a single property and is no longer a landlord.

Reasons for Decision

20. The Respondent accepted that she was in breach of the 2011 Regulations and that therefore in terms of Regulation 10 the Tribunal was obliged to make an order against her.
21. The Tribunal accepted that the Respondent's failure to lodge the deposit was not wilful but arose from a lack of knowledge of the law. The Respondent was quite vague as to who she had spoken to and when this telephone conversation had occurred in 2012. However as a landlord she had an obligation to be fully aware of all the legislation that affected her. It is no excuse to say that the advice she received was ambiguous. Furthermore the

Respondent's difficulties are compounded by the fact that over the years she entered into new Short Assured Tenancy Agreements with the Applicants and therefore should have considered if there was a new agreement then the deposit ought to have been lodged within 30 working days of that agreement.

22. The Tribunal was also concerned that on obtaining legal advice to the effect that she ought to have lodged the deposit the Respondent did not then take immediate steps to place the deposit in an approved scheme even although it was out of time as that would have at least allowed the parties to have the scheme administrators to adjudicate on any dispute over the return of the deposit.
23. The deposit was unprotected for over 5 years and 8 months. During that time anything could have happened to the Respondent that could result in the Applicant's funds being lost. She could have been sequestrated or the property could have been re-possessed by a secure creditor or she could have died. In any of these events the Applicants funds could have been lost entirely.
24. In considering an appropriate sanction the Tribunal has to consider all the factors and make an award that is fair and just and proportionate. The Tribunal has taken account of the fact that the failure on the part of the Respondent was not wilful but due to ignorance of the law. It has also taken account of the fact that the Respondent is not a professional landlord and has no other let properties and indeed is no longer a landlord at all. Against that the Applicants funds were unprotected for many years throughout the whole length of their tenancy and even when the Respondent became aware of the problem she did not immediately lodge the funds in an approved scheme. The Applicants were therefore deprived of the opportunity to avail themselves the ADR provisions offered by the three approved schemes.
25. The Tribunal has concluded that the breach of the Regulations is a serious one and that this must be reflected in the sanction imposed but taking account of the mitigating factors, that the breach was not wilful, that the Respondent was not a professional landlord, is no longer a landlord and therefore there is no risk to other tenants in the future, the Tribunal considers an award of two times the deposit to be a fair, just and proportionate amount.

Decision

26. The Tribunal finds the Applicants entitled to an order for payment by the Respondent in the sum of £950.00.

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.



Legal Member/Chair

6 November 2019
Date