

**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 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/19/2606**

**Re: Property at 58E Nelson Street, Aberdeen, AB24 5ES (“the Property”)**

**Parties:**

**Mr Finlay Eeles, Mr Ryan Forrester, Lilybank, Kirktonhill Road, Marykirk, AB30 1UZ; 13 Lismore Court, Perth, PH1 3AL (“the Applicant”)**

**Miss Gemma Blatherwick, 148 Hutcheon Street, Aberdeen, AB25 3RX (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatrige (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 £600 in terms of Regulation 10 (a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011(the Regulations) should be made.**

**BACKGROUND:**

The Applicants made an application under Rule 103 of the Rules of Procedure on 14 August 2019 for payment under Regulation 10 (a) of the Regulations.

The Applicants submitted to the Tribunal bank statements and stated that the deposit had not been paid into an approved scheme and that only part of the deposit had been returned by the Respondent to the Applicants after the end of the tenancy. They stated they wished also to claim repayment of the deposit itself.

The Respondent lodged a bundle with photographs, invoices and correspondence on 5 October 2019 and claimed various issues regarding repairs and cleaning of the property as reason for retaining part of the deposit.

The Applicants made further representations in answer on 31 October 2019.



The documents and representations by both parties are referred to for their terms.

A Case Management Discussion (CMD) was fixed for 7 November 2019.

Both parties had been advised in the notification for the Case Management Discussion that the Tribunal may make a decision at that stage.

### **The Case Management Discussion:**

Both Applicants and the Respondent, accompanied by her supporter Hannah Lindbeck, attended the CMD.

At the start of the CMD the legal member explained the nature of an application under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the Rules) and explained to the parties that this is not concerned with the issue of repayment of the deposit or any other civil claims arising out of the tenancy but solely with the question of whether or not a landlord had complied with the duties imposed by The Tenancy Deposit Schemes (Scotland) Regulations 2011 (the Regulations). Any other orders they may seek would have to be dealt with in a separate application.

The legal member set out the provisions relevant to this case.

*In terms of Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (the Regulations) an application under that Regulation must be made within 3 months of the end of the tenancy.*

*In terms of Regulation 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."*

*In terms of Regulation 3 "(1) A landlord who had received a tenancy deposit in connection with a relevant tenancy must, within 30 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."*

*In terms of Regulation 42 (2) the information includes*

*" (a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord,*

*(b) the date on which the tenancy deposit was paid to the scheme administrator...*

*(d) a statement that the landlord is , or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of 2004 Act,*

*(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid and*

*(f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.*

*(3) the information in paragraph (2) must be provided*



(a) where the tenancy deposit is paid in compliance with regulation 3 (1), within the timescale of set out in that regulation, or  
(b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.”

With regard to the procedure applicable at a CMD Rule 17 of the Rules of Procedure states:

*Case management discussion*

17.—(1) *The First-tier Tribunal may order a case management discussion to be held—*

(a) *in any place where a hearing may be held;*

(b) *by videoconference; or*

(c) *by conference call.*

(2) *The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.*

(3) *The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties’ dispute may be efficiently resolved, including by—*

(a) *identifying the issues to be resolved;*

(b) *identifying what facts are agreed between the parties;*

(c) *raising with parties any issues it requires to be addressed;*

(d) *discussing what witnesses, documents and other evidence will be required;*

(e) *discussing whether or not a hearing is required; and*

(f) *discussing an application to recall a decision.*

(4) *The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.*

However, Rule 18 of the Rules of Procedure states:

*Power to determine the proceedings without a hearing*

18.—(1) *Subject to paragraph (2), the First-tier Tribunal—*

(a) *may make a decision without a hearing if the First-tier Tribunal considers that—*

(i) *having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and*

(ii) *to do so will not be contrary to the interests of the parties; and*

(b) *must make a decision without a hearing where the decision relates to—*

(i) *correcting; or*

(ii) *reviewing on a point of law, a decision made by the First-tier Tribunal.*

(2) *Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.*

The Applicants stated that they had each paid £300 as a deposit when the tenancy commenced but had only received part of this back at the end of the tenancy.

The Respondent stated that this was correct and that, as set out in her representations, she had been under the impression that all she had to do as a landlord was keep the funds separate and that she had kept the cash in a safe with the tenancy agreement. She explained her understanding of the lease was that it



was either this or payment of the deposit into a Scheme. She had not appreciated that there was a duty to pay the deposit into an approved Scheme. She only rents out this property, which she had previously occupied herself, and had simply misinterpreted her obligations. She had kept the funds safe during the tenancy period and had only deducted sums for the repairs and cleaning necessary at the end of the tenancy as agreed in the tenancy agreement. She had no other experience as a landlord other than renting out a room while she lived in the property previously. She had paid £95 back to Mr Forrester and £85 to Mr Eeles. At no point had she been aware she should have paid the funds into an approved Scheme and had she been made aware she would have done so immediately.

With consent of the Applicants the Respondent's supporter made a brief statement that she had known the Respondent for a long time and that this had been a misunderstanding rather than a deliberate flouting of the Regulations.

The Applicants stated that they believe that the failure to comply with the Regulations was a misunderstanding on the part of the Respondent and that there had been no malice involved. They also accepted that the funds had been kept separate during the tenancy period.

Neither party considered that there would be a need for a hearing as the facts of the case were agreed. Neither party, although invited to do so by the legal member, wished to specify a particular amount for any order to be made in the case.

#### **Findings in fact:**

1. The Applicants and the Respondent entered into an tenancy agreement commencing on 15 August 2018
2. At that point both Applicants paid a sum of £300 each to the Respondent as deposit for the property.
3. The total deposit for the property was £600.
4. The Respondent is the landlord stated in the Tenancy Agreement under part 2.
5. The tenancy ended on or around 13 June 2019.
6. The Applicants returned the keys to the property on 13 June 2019
7. The deposit was not lodged with an approved scheme for the duration of the tenancy.
8. The Applicants did not receive any communication advising them of the matters stated in Regulation 42 (2) of the Regulations.
9. The clause in the tenancy agreement dealing with the deposit (Clause 4.1) states "The Deposit will be held in accordance with the Tenancy Deposit Scheme Rules as issued by the relevant Tenancy Deposit Scheme."
10. The Respondent only has one rental property and had not rented out the property previously.
11. During the duration of the tenancy the cash deposit amount had been kept in a safe by the Respondent together with the tenancy agreement.
12. Following the end of the tenancy the Respondent returned a total of £180 of the £600 deposit to the Applicants.



## **Reasons for Decision:**

The tribunal considers that the landlord did not comply with the requirements of Regulations 3 and 42 of The Tenancy Deposit Schemes (Scotland) Regulations 2011. This is not disputed. The facts of the case are not in dispute.

The deposit was not paid over to an approved scheme within 30 working days of the commencement of the tenancy agreement and the information stated in Regulation 42 (2) of the Regulations was not provided by the Respondent to the Applicants.

In her representations the Respondent stated she had been under no obligation to pay the deposit into an approved Scheme. At the CMD she again stated this in reference to the tenancy agreement until it was pointed out to her that the tenancy agreement itself actually refers to the Tenancy Deposit Scheme and that the Regulations put a statutory obligation on any landlord of a relevant tenancy to pay any deposit received into an approved Scheme. The Respondent had not understood this and had kept the funds separate from her own funds for the duration of the tenancy, which is what she had understood to be her obligation.

Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 is a regulatory sanction to punish the landlord for non-compliance with the rules. The non-compliance with the Regulations is not disputed by the landlord.

Ultimately the Regulations were put in place to ensure compliance with the Scheme and the benefits of dispute resolution in cases of disputed deposit cases, which the Schemes provide.

The Tribunal considers that the discretion of the Tribunal requires to be exercised in the manner set out in the case *Jenson v Fappiano* (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015) by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case.

The Tribunal took into account the length of time the deposit was unprotected, which the entire length of the tenancy, the fact that the Applicants had been ultimately deprived of the benefit of the Tenancy Deposit Scheme dispute resolution mechanism and that none of the information required in Regulation 42 had been provided. However, the Tribunal also took into account that the landlord had no previous experience and did not act out of malice and had ensured that the deposit would not mix with her own funds and was kept safe. She had clearly misunderstood her obligations in respect of the deposit and of the wording of the tenancy agreement regarding this. The Tribunal also considered that the Respondent as landlord appears to have now understood her obligations in this regard and would be highly unlikely to fail to comply with the Regulations in regard to any future deposit payments received.

In all the circumstances the tribunal considered it fair, proportionate and just to make an order for the sum of £600, which constitutes a meaningful sanction for non-compliance of the Regulations at the level of 1 times the deposit amount.



**Decision:**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) grants an order against the Respondent for payment to the Applicant of the sum of £600 in terms of Regulation 10 (a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.**

**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**

7.11.19  
\_\_\_\_\_  
**Date**