



**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/18/2651

Re: Property at 182 Charles Avenue, Arbroath, DD11 2HD (“the Property”)

Parties:

Miss Lesley Smith, Marina, Main Street, St Cyrus, Montrose, DD10 0BA (“the Applicant”)

Mr Mark Skelly, 3 Inchcape Road, Arbroath, DD11 2DF (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to order for payment by the Respondent to the Applicant of the sum of £600

BACKGROUND:

The Applicant lodged an application under Rule 103 of the Rules of Procedure on 19 September 2018.

The Applicant submitted to the Tribunal a copy of the Short Assured Tenancy Agreement for the property commencing on 13 February 2018, which also contained the reference to a deposit of £475 to be paid. She stated she had moved out on 25 August 2018 and only received £200 of her £475 deposit back and had realised this had been unprotected when the tenancy came to an end. She further lodged a document from SafeDeposits Scotland confirming the deposit for the property was not registered with SafeDeposits Scotland.

The Respondent lodged a letter to the Tribunal received on 4 December 2018 acknowledging that a deposit of £475 had been received from the Applicant and stating that the Respondent had forgotten to place this into a deposit scheme due to moving house and due to the fact that his wife had been heavily pregnant at the time.

with any duty in Regulation 3 the First tier Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit;.”
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.”

FINDINGS IN FACT:

1. The Applicant paid a deposit of £475 to the landlord for the tenancy starting 13 February 2017.
2. The tenancy agreement states that the deposit will be paid to Safe Deposit Scotland.
3. The tenancy started on 13 February 2017 and ended on 25 August 2018.
4. The Applicant moved out of the property on 25 August 2018.
5. The application was made on 19 September 2018.
6. The deposit was not paid into an approved scheme for the whole duration of the tenancy.
7. This was admitted by the Respondent.
8. The Respondent is involved in the letting of other properties and at the time the property was let to the Applicant had two other properties he had let out.
9. The Respondent at the time the tenancy commenced had been in the process of moving house and there were problems with his wife’s pregnancy resulting in her being induced early.
10. There is a dispute about the part of the deposit which should have been returned to the Applicant.
11. As the deposit had not been paid into an approved scheme the Applicant had not access to the dispute resolution scheme provided by the approved deposit schemes.
12. The landlord had held the deposit in a separate account for the tenancy not used by him and his wife as their household account.

REASONS FOR DECISION:

The tribunal considers that the landlord did not comply with the requirements of Regulations 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011. This is not disputed.

The deposit was not paid over to a registered scheme within 30 working days of the commencement of the tenancy agreement. The deposit had remained unprotected for the entire duration of the tenancy.

Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 is a regulatory sanction to punish the landlord for non-compliance with the Regulations. There have been various approaches in calculating the appropriate sanction in terms of the Regulations. The preferred approach appears to be that adopted in *Jenson v Fappiano*, 2015 GWD 04-89 should be “fair, proportionate and just, having regard to the seriousness of the con-compliance”.

The Tribunal has discretion to award up to three times the amount of the deposit, in this case the upper limit would be £1,425.

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 took into account:

1. the length of time the deposit was unprotected, namely the entire duration of the tenancy and a significant period of time of 18 months,
2. that the landlord and Respondent was not an "accidental" with the property being the only and first property the landlord was involved in letting but had clearly been involved directly in letting properties previously and clearly knew of the landlord duties and had in fact stated on the lease document which scheme the deposit would be paid into
3. because the Scheme was stated in the lease, the Respondent had no reason to query this further as she was not familiar with the documentation to be received
4. that the tenancy had come to an end and the Applicant had no redress to the dispute resolution scheme provided by the approved deposit schemes and thus the purpose of the deposit scheme regulations had been negated by the failure to lodge the deposit as required
5. that in this case the dispute resolution scheme would have likely been used to determine the amount to be returned to the Applicant as there appears to have been an actual dispute over the deposit funds
6. that the Respondent admitted the breach of the duty to lodge the deposit at an early stage
7. that the Respondent appears to have made a mistake due to his private circumstances at the time and that the lack of compliance with the obligations under the Regulations was due to an oversight rather than deliberate noncompliance with his duty as a landlord
8. that the Respondent had no measures in place to check at an appropriate stage whether he had complied with all his landlord duties.

Taking this into account the Tribunal considered that in all the circumstances the amount should not be at the maximum or minimum level in this case. On the one hand it was a significant and complete breach of the duty and resulted in the protection of the deposit envisaged by the Regulations not being provided. In this case the breach was never remedied and had exactly the consequences the Regulations were set up to avoid. On the other hand it is accepted that the Respondent did not try to deliberately breach the landlord duties or deliberately put the deposit at risk. Given the severity and nature of the non compliance in this case an amount of £600 is justified.

DECISION:

The First-tier Tribunal for Scotland (Housing and Property Chamber) grants an order for payment by the Respondent to the Applicant 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.

P Hennig-McFatrige

Legal Member/Chair

17.12.18

Date