



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under The Tenancy Deposit Schemes (Scotland) Regulations 2011 as amended by The Tenancy Deposit Schemes (Scotland) Amendment Regulations 2019. (“the Regulations”).

Chamber Ref: FTS/HPC/PR/22/1113

Re: Property at 18 Weavers Loan, Aberlady, EH32 0FE (“the Property”)

Parties:

Mr Kaspars Leijers, 18 Weavers Loan, Aberlady, EH32 0FE (“the Applicant”)

Lowther Homes Ltd, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member)

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the sum of Three Hundred and Fifty Pounds (£350) to the Applicant.**

Background

- 2. By application form dated 18th April 2022, the Tribunal received an application from the Applicant seeking payment of a sum in compensation under regulation 10(a) of the Regulations.**
- 3. The date of the case management discussion was intimated to the Respondent by sheriff officer on 28th June 2020.**
- 4. A case management discussion was held on 5th August 2022. It was held by audio conference. There was no appearance from the Respondent and no written representations had been made by it. The Applicant was not present and was represented by Ms Anastasija Leijere.**
- 5. It was noted that the date of the case management discussion had been intimated to the Respondent and the Tribunal had the Sheriff Officer’s certificate of intimation dated 28th June 2022.**

6. The Legal Member outlined the purpose of a case management discussion and the terms of Rule 17 of the Chamber Rules:

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

7. Ms Leijere said that she saw no point in a Hearing being fixed. She said that the Tribunal had all the information before it to make a determination. She said that she considered that the maximum penalty should be awarded and the Applicant should get an award equivalent to three times the tenancy deposit. Ms Leijere conceded that the Respondent had lodged the tenancy deposit with an approved tenancy deposit scheme immediately upon having received it. She said that the Respondent should be penalised for failing to comply with the requirements of the Regulations and the fact that the Applicant had to pursue it for information regarding the tenancy deposit.

8. The Tribunal had regard to the following documents:

- i) Application dated 18th April 2022;**
- ii) Private Residential Tenancy Agreement dated 14th October 2019;**
- iii) Applicant's bank statement showing payment of deposit of £695 on 15th October 2019;**
- iv) Certificate from SafeDeposits Scotland showing deposit of £695 lodged on 16th October 2019.**
- v) Undated letter from Respondent dated stating that it had failed to provide the required information to the Applicant.**

9. The Law

Tenancy Deposit Schemes (Scotland) Regulations 2011(as amended)

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.

(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

(a) in respect of which the landlord is a relevant person; and

(b) by virtue of which a house is occupied by an unconnected person,

unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

9. (1) A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—

(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 sheriff 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.

42 Landlord's duty to provide information to the tenant

(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).

(2) The information is—

(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;

(c) the address of the property to which the tenancy deposit relates;

(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 the 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 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.

- 10. The Tribunal was satisfied that it had sufficient information to determine the application and that the Respondent had chosen not to participate in the process.**

Findings in Fact

- 11.1 The Applicants and the Respondent were parties to a Private Residential Tenancy Agreement for the Property.**
- 11.2 The tenancy commenced on 14th October 2019 and is continuing.**
- 11.3 The Applicants paid a tenancy deposit of £695 to the Respondent on 15th October 2019.**
- 11.4. The Respondent lodged the tenancy deposit with an approved tenancy deposit scheme and it was protected from 16th October 2019.**
- 11.5 The Respondent provided information to the Applicant with regard to the tenancy deposit in 2022.**

Finding in Fact and Law

- 12 The information which the Respondent provided to the Applicant in connection was not provided within thirty working days of the beginning of the tenancy or within thirty working days of payment of the deposit to the tenancy deposit scheme.**

Reasons

- 13. Ms Leijere accepted that the tenancy deposit had been lodged timeously with an approved tenancy deposit scheme.**
- 14. Ms Leijere said that the Applicant had asked for information on the tenancy deposit and that, sometime around the beginning of 2022, the Respondent had sent him an undated letter confirming that it had failed to provide information about the tenancy deposit to him and enclosing a certificate from SafeDeposits Scotland. Ms Leijere conceded that the letter from the Respondent had informed the Applicant that he may wish to submit an application to the Tribunal with regard to its failures.**
- 15. It was noted that the letter from the Respondent apologised for its administrative error.**

Determination

- 16. The matter was focussed. There had been a breach of the Regulations and the letter from the Respondent acknowledged this.**

The Sanction

- 17. The creation of regulations to cover tenancy deposits was to protect tenants' funds and provide a structured process of dispute resolution. The Respondent received £695 as a tenancy deposit and lodged it with an approved deposit scheme within thirty working days of the beginning of the tenancy. It did not timeously provide the Applicant with the necessary information required in terms of Regulation 42 of the Regulations.**
- 18. The Regulations are clear in stating that, where there is a breach such as this, the Tribunal must make an order requiring a Landlord to pay a Tenant a sum not exceeding three times the amount of the tenancy deposit. The amount is a matter of judicial discretion and must reflect what is a fair, proportionate and just sanction, having regard to the purpose of the Regulations and the gravity of the breach. It is a balancing act.**
- 19. In this particular case, the Tribunal had regard to the fact that the deposit was protected the day after it had been paid and was therefore deposited within thirty working days of having been paid.**
- 20. The Tribunal had regard to and adopted the approach of the Court in Russell-Smith and Others v Uchegbu (2016) SC EDIN 64 where the Sheriff had effectively stated there to be two broad aspects to the sanction. The first was the period of time the deposit was unprotected and the second with regard to breach of the Regulations is a sum to reflect a weighting taking into account the particular circumstances of the case including the landlord's experience etc.**
- 21. The deposit was not unprotected and there is therefore no sanction in respect of that aspect.**
- 22. The Respondent is a professional landlord and should have in place a robust system to ensure that information is provided to tenants so that the Regulations are complied with.**
- 23. The Tribunal accepted that the Applicant had to pursue the Respondent for information. The required information was not provided for over two years from the commencement of the tenancy. Balanced against that is the fact that the Respondent apologised for its oversight and signposted the Applicant to the Tribunal.**
- 24. The tenancy deposit was never at risk and, in all the circumstances, the Tribunal determined to make an Order requiring the Respondent to pay the sum of £350 to the Applicant which is equivalent to a sum of half the tenancy deposit.**

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.

**Martin J. McAllister,
Legal Member
5th August 2022**