



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) and Rules 103 and 17 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**Chamber Ref: FTS/HPC/PR/22/1575**

**Re: Property at 0/1 132 Falside Road, Paisley, PA2 6JT (“the Property”)**

**Parties:**

**Ms Clare Callaghan, 34 Colinslee Drive, Paisley, PA2 6QS (“the Applicant”)**

**Margaret White, 42 Stanely Avenue, Paisley, PA2 9LE (“the Respondent”)**

**Tribunal Members:**

**Karen Moore (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that that an Order for payment in the sum of ONE THOUSAND FIVE HUNDRED AND SEVENTY FIVE POUNDS (£1,575.00) Sterling be granted.**

**Background**

1. By application received on 25 May 2022 (“the Application”), the Applicant applied to the Tribunal for an Order in terms of Regulation 10 of the Regulations. The Application comprised a copy of a private residential tenancy agreement between the Parties commencing on 11 December 2020 (“the PRT”) indicating that the tenancy deposit of £525.00 was required, bank statement evidence of payment of the deposit and rent made on 10 December 2020, copy notice from the Respondent to the Applicant dated 8 February 2022 purporting to be a notice of termination of the tenancy, copy notice from the Applicant to the Respondent dated 22 February 2022 terminating the tenancy on 20 March 2022 and copy email exchanges between the Applicant and the three approved deposit scheme providers dated on or around 16 February 2022 indicating that the deposit had not been lodged with any of them. , The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 10 August 2022 at 10.00 which date was intimated to the Parties.

2. Prior to the CMD, the Respondent lodged written representations dated 19 July 2022 explaining that the failure to lodge the deposit with an approved scheme was an unintentional oversight as she was not familiar with rules and regulations as she was not engaging a letting agent. The written submissions went on to detail why the Respondent considered herself to be a good landlord, that she attempted to meet with the Applicant without success and that she is undergoing medical treatment for a serious illness.

### **Case Management Discussion**

3. The CMD took place on 10 August 2022 at 10.00 by telephone. Both Parties took part. Neither Party was represented.
4. The Applicant confirmed the detail of the Application.
5. The Respondent accepted that she had not complied with the Regulations and had done so as an oversight and a lack of awareness of requiring to comply as the PRT was a private let. Her view was that she was naïve and that the Applicant was more aware of her rights as “she has done this before”. The Respondent expanded further on her written submissions and was at pains to state repeatedly that the Applicant had accrued utility and other debts during the tenancy and that she had supported the Applicant during the tenancy.
6. The Applicant began to read a statement which confirmed the content of the Application and pointed out that the clause in the PRT which referred to the deposit had been scored through. As the statement was going on to narrate matters which occurred during the tenancy and which were not relevant to the Application, the Tribunal advised that it was not necessary for the Applicant to continue, the Tribunal explaining that as the Respondent accepted non-compliance with the Regulations, the Tribunal must order her to pay to the Applicant an amount of no more than three times the amount of the deposit.
7. The Tribunal asked the Parties for their views on the amount to be awarded. The Applicant stated that not knowing where the deposit was at the end of the tenancy and the application process had caused her stress and anxiety. The Respondent stated that she would leave the sum to the Tribunal but stated that the Applicant’s actions had caused her considerable stress, that she is undergoing medical treatment and had not been aware of her responsibilities. She could not explain why the clause in the PRT which referred to the deposit had been scored through and did not realise that the notice to leave did not comply with the legislation. She again stated that the Applicant had accrued

utility and council tax debts during the tenancy and explained that she had cancelled her landlord registration in order to deal with the debts.

8. The Parties agreed that the deposit had been repaid at the end of the tenancy. The Respondent advised that she is in a position to pay any sum ordered by the Tribunal.

### **Findings in Fact**

9. From the Application and the CMD, the Tribunal made the following findings in fact: -
  - i) There had been a tenancy of the Property between the Parties from around 11 December 2020 to 20 March 2022;
  - ii) A tenancy deposit of £525.00 was paid on 10 December 2020;
  - iii) The tenancy deposit was not lodged with any approved deposit scheme provider in terms of the Regulations during the tenancy;
  - iv) The PRT is a standard model agreement which made reference to the Respondent's statutory duties in respect of lodging the tenancy deposit;
  - v) The relevant clause in the PRT which ought to have been completed to identify the approved deposit scheme provider has been completed by a dash or a score through and so does not identify the approved deposit scheme provider and
  - vi) The deposit was returned to the Applicant at the end of the tenancy.

### **Decision and Reasons for Decision**

10. The Tribunal had regard to the following Regulations: -
  - i) Regulation 3 which states:- *“(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.”*;
  - ii) Regulation 42 which states *“(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; and*

- iii) Regulation 10 which states *“If satisfied that the landlord did not comply with any duty in regulation 3 the Tribunal (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit”*.

11. From the Findings in Facts and by the Respondent's own admission, the Tribunal determined that the Respondent had breached both Regulations 3 and 42 in their entirety. Therefore, the Tribunal was bound to make an Order in terms of Regulation 10.

12. The Tribunal noted that the Respondent's position that her failure to comply with the Regulations was an unintentional oversight as she was not familiar with rules and regulations as she had not engaged a letting agent and that she did not think that the Regulations applied in those circumstances. However, it was clear to the Tribunal from the Respondent's written and oral submissions that this was not her first time as a landlord and so she ought to have been aware of the relevant legislation. The Tribunal had regard to the PRT and to the fact that the relevant clause was not only incomplete and did not identify where the deposit would be held, it had been completed with a dash or a "score through". The Tribunal could not reconcile this action with the Respondent's position that she was unaware of the Regulations as her own PRT referred to the Regulations and there had been a deliberate action to avoid completion of the relevant clause. The Tribunal did not accept the Respondent's position that she was naïve to her duties as a landlord and took the view that her repeated references to the Applicant having accrued debts was an attempt to discredit the Applicant unnecessarily and portray herself as an injured party, rather than accept her culpability.

13. The Tribunal took the view that the tenancy deposit was not the Respondent's funds but was the Applicant's funds and, that as the Regulations are in place to protect the Applicant's funds, the Applicant was entitled to that full protection. She was entitled to have the funds lodged with a third-party, to know where her funds were held and to know how and when she could access those funds. The Tribunal took the view that the Respondent's failure to comply with the Regulations for the duration of the tenancy was well in excess of the statutory

thirty-day time limit and so was at the extreme end of a breach of the Regulations. The Tribunal had regard to the Respondent's criticism of the Applicant lodging the Application and to the stress she had been caused but gave little weight to this: the Applicant was exercising her statutory rights and, if the Respondent had complied with her statutory duties, there would have been no need for the Application and the Respondent's stress could have been avoided. The Tribunal noted that the deposit had been repaid and give little weight to this as the deposit was the Applicant's funds and she was entitled to its return.

14. Accordingly, in all the circumstance, the Tribunal awarded the Applicant an amount of three times the deposit.

15. Having made that decision, the Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "may do anything at a case management discussion .....including making a decision" and so proceeded to make an order for payment in the sum of £1,575.00.

### **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.**

# K Moore

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Legal Member/Chair

10 August 2022

Date