



**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/19/3114

**Re: Property at 68 Loch Shin, St Leonards, East Kilbride, G74 2DH (“the
Property”)**

Parties:

**Mr Christopher Copeland, 3 Muirend Road, Kilmarnock, KA3 2DD (“the
Applicant”)**

**Mr Colin English, 94 Maxwellton Avenue, East Kilbride, G74 3DY (“the
Respondent”)**

Tribunal Members:

Andrew Cowan (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 FIVE HUNDRED
POUNDS (£500) in terms of Regulation 10 (a) of The Tenancy Deposit Schemes
(Scotland) Regulations 2011 (“the Regulations”) should be made**

Background

1. This is an application, dated 24th September 2019, brought in terms of Rule 103 (Application for order for payment where Landlord has not paid the deposit into an approved scheme) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended.

The application is made under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations").

2. This case called before me for a Case Management Discussion ("CMD") on 16th December 2019 at 2pm. Both the Applicant and the Respondent were present at the discussion.
3. The Applicant had provided, with the application, a copy of the tenancy agreement between the parties along with other supporting documentation.
4. The Respondent had written to the Tribunal by letter dated 30th November 2019 in which he had made various written representations regarding the application, and to which he had attached further supporting documents.
5. At the start of the CMD it was explained to both parties the procedure to be followed and the purpose of the hearing. In particular it was explained to both parties that the only issue which was before the Tribunal for decision related to the current application. The issue for the Tribunal was whether or not the Respondent had complied with the duties specified in Regulation 3 of the Regulations and to consider any sanction for any non-compliance in relation thereto. The Tribunal further explained to parties that issues in relation to alleged rent arrears, or damages arising as a consequence of the condition of the property at the time the tenancy was ended, were not disputes which formed part of the current application and accordingly could not be considered by the Tribunal at this hearing.
6. Having discussed the position with both parties the Tribunal noted that the Respondent, quite fairly, accepted that he had not acted in accordance with the duties specified in Regulation 3 of the Regulations. In those circumstances I explained to the Respondent that, in accordance with Regulation 10 of the regulations, the Tribunal was required to order the Respondent to pay to the Applicant an amount not exceeding three times the amount of the Tenancy Deposit.
7. There was no dispute between the parties as to the facts of the matter.

Findings in Fact

8. The following facts were agreed by the parties at the CMD:-

- a) The Applicant and the Respondent were parties to a tenancy agreement, being tenant and landlord respectively.
- b) The tenancy agreement commenced on 1st February 2017.
- c) The tenancy agreement terminated recently and this application made by the Applicant has been made within three months of the end of the Tenancy.
- d) A tenancy deposit of £500 was paid by the Applicant to the Respondent on 1st February 2019..
- e) The Respondent paid the tenant deposit into an approved scheme on or around 10th September 2019, over two and a half years after the deposit had been paid.
- f) The tenancy deposit remains lodged with the approved scheme as at this time.
- g) The Respondent had not complied with his obligations under Regulation 3 of the Regulations to i) pay the deposit to the administrator of an approved scheme, or (ii) provide information about the approved scheme to the tenant, within the period required by Regulation 3.

Reasons for Decision

9. Regulation 3 of the 2011 Regulations provides as follows:

“(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.”

10. The Respondent as landlord was required to pay the deposit into an approved scheme. He accepts that he failed to do so.

11. Regulation 10 of the 2011 Regulations provides as follows:

"If satisfied that the landlord did not comply with any duty in regulation 3 of 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 requires under regulation 42."

12. The Tribunal is satisfied that the Respondent did not comply with his duty under regulation 3, and accordingly it must order the Respondent to pay the Applicant an amount not exceeding three times the amount of the tenancy deposit.

13. In making a decision, the Tribunal had regard to the comments of Sheriff Welsh in *Jenson v Fappiano*, 2015 G.W.D 4-89, at paragraph 11. In determining sanction in these cases, the judge is exercising judicial discretion, which he characterised as follows:-

"1. Judicial discretion is not exercised at random, in an arbitrary, automatic or capricious manner. It is a rational act and the reasons supporting it must be sound and articulated in the particular judgement.

2. The result produced must not be disproportionate in the sense that trivial noncompliance cannot result in maximum sanction. There must be judicial assay of the nature of the noncompliance in the circumstances of the case and a value attached thereto.

3. A decision based on judicial discretion must be fair and just."

14. In the case of *Tenzin v Russell* 2015 Hous. L.R.11, an Extra Division of the Inner House of the Court of Session confirmed that the amount of any award in respect of regulation 10(a) of the 2011 Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.
15. In determining what a fair, proportionate and just sanction in the circumstances of this application should be, the Tribunal took account of the facts that the Respondent had been unaware of the requirement to lodge the deposit with an approved scheme. In attempting to assist the Applicant to move on to alternative accommodation with the Local Authority the Respondent had been made aware of his duties regarding the deposit by the Local Authority. On becoming aware of his duties, the Respondent had taken immediate steps to lodge the deposit with an approved scheme. The Respondent only lets two properties and will now ensure that future deposits are protected by the regulated schemes. He has attempted to treat the Tenant fairly at all times and accepted that he had failed to comply with the terms of the deposit regulations. That was as a consequence of his ignorance of the regulations and not as a wilful act of disobedience.
16. The 2011 Regulations have been enacted to provide protection to tenants in respect of their deposit and ensure that they can obtain repayment of their deposit at the conclusion of the lease. The period during which the deposit was not lodged in an approved scheme and during which the Applicant did not have the security provided by such lodging was over thirty months.
17. The Tribunal does, however, also accept that the circumstances do provide some mitigation in respect of the sum to be awarded in the exercise of its judicial discretion.
18. Balancing these various competing factors in an effort to determine a fair, proportionate and just sanction in the circumstances of this application, the Tribunal considers that the sum of £500.00 (the amount of the tenancy deposit) is an appropriate sanction to impose.

Decision

19. For the foregoing reasons, the Tribunal orders the Respondent in respect of its breach of Regulation 3 of the 2011 Regulations to make payment to the Applicant of the sum of £500.00 in terms of Regulation 10(a) of the 2011 Regulations.

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.

Andrew Cowan

16 December 2019

Legal Member/Chair