

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 9 of the Tenancy Deposit
Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/19/0003

**Re: Property at 45/9 Caledonian Crescent, Edinburgh, Midlothian, EH11 2AQ
("the Property")**

Parties:

**Miss Lindsey Susan Blair, Miss Mutale-Tenitra Nyondo, 3 Plewlands Avenue,
Edinburgh, Midlothian, EH10 5JY; 2 Spittalfield Cottages, Glencaple Road,
Dumfries, DG1 4TE ("the Applicant")**

**Mr Jack Gray, 6 Ashfield Hall, Lisburn, County Antrim, BT27 5WG ("the
Respondent")**

Tribunal Members:

Lesley Johnston (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that the Respondent should pay £200 to the Applicants**

Background

By application dated 31 December 2018 and emailed to the Tribunal on the same date, the Applicants applied to the Tribunal for an Order under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011('the Regulations') for an order for payment of three times the deposit sum of £860 in respect of the Respondent's failure to comply with his duties under regulation 3.

The application was made in terms of rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules for Procedure) Amendment Regulations 2017 ('the Rules').

The following documents were lodged by the Applicants in respect of the application:

1. Lease in respect of the property dated 1 June 2015;
2. Letter from CMC Property to the Applicants dated 26 September 2018;
3. Deposit Certificate from Safe Deposits Scotland confirming receipt of the deposit on 20 August 2015

The Case Management Discussion

The case called in George House, Edinburgh on 5 March 2019 at 11.30am for a Case Management Discussion. The Applicants attended the Case Management Discussion by telephone conference. The Respondent was personally present.

The Respondent produced written representations dated 24 February 2019 in respect of the application. They had been lodged and intimated to the Respondents. The Legal Member did not have a copy, but the Respondent provided a copy at the hearing and the Respondents confirmed that they had already received it.

The Applicants submitted that they paid the deposit to the Respondent's letting agents, CMC Property, shortly before moving into the property on 1 June 2015. They required to pay the deposit before the signing of the lease in order to secure the property. They asked the Letting Agents for confirmation for the details of the Scheme into which the deposit had been paid, however, were not told.

The Applicants advised that they moved out of the property on 1 October 2018. They did not have details of the scheme into which the deposit had been paid. They had to get in touch with Safe Deposit Scotland to trace their deposit. At that point, they realised that the deposit had not been paid into the Scheme within 30 working days of the start of the tenancy. It was paid in on 20 August 2015. The Applicants advised that they received their deposit back on 9 November and that it had caused a lot of time and stress trying to get the deposit returned.

Mr Gray referred to his letter dated 24 February 2019 and asked that it be taken into account. In addition, he made oral submissions to the Tribunal summarising the content of the letter.

The Respondent accepted that the deposit was paid by the Applicants and that it was not paid into the scheme until 20 August 2015. He explained that he did not know about the Deposit Scheme, the Regulations or his responsibilities under the Regulations until receipt of this application. At that stage, he made enquiries with Safe Deposit Scotland who informed him of the law and his breach. He also sought advice from the Scottish Landlords Association.

The Respondent advised that his letting agents were CMC Properties. Shortly after the Applicants moved out of the property CMC Properties ceased trading and had gone into liquidation. It transpired thereafter that the individual at CMC Properties with whom the Respondents dealt was failing in his duties as letting agent. It transpires that he was failing to pay the deposits of some rental properties to schemes at all. For example, the tenants who moved into the property after the Applicants had not had their tenancy deposit deposited to a Scheme at all. That individual is currently being pursued in the courts in respect of missing deposits and the Applicant has been advised that the individual may face criminal charges.

The Respondent accepted that he relied too heavily on CMC and that it was his obligation, not theirs, to make payment of the deposit into a scheme. However, he was not a professional landlord. This was his only rental property in Scotland (he has another in New Zealand). The Respondent purchased the property when he lived in Scotland several years ago. He and his wife decided to let the property when they decided to return to New Zealand and thereafter to move to Northern Ireland. He was relying on the agent he appointed and paid to do everything correctly.

The Respondent repeatedly apologised to the Applicants for this omission and for the fact that it had only now come to light.

In response, the Applicants acknowledged the Respondent's apology but advised that his ignorance was no excuse and he ought to have carried out due diligence as to his responsibilities as Landlord.

Findings in Fact

The Tribunal made the following findings in fact:

1. The parties entered into a lease agreement on 1 June 2015;
2. The lease ended on 1 October 2018;
3. In terms of clause 5 of the lease, a deposit of £860 was paid by the Applicants shortly prior to the date of entry;
4. The deposit was paid into the Safe Deposits Scheme on 20 August 2015;
5. The applicants lodged the application with the Tribunal on 31 December 2018;
6. The applicants received their deposit back on around 9 November 2018, over 30 days after moving out of the property;
7. The Landlord is not a Local Authority, registered social landlord or Scottish Homes
8. The Applicants are not relatives of the Landlord.

Reasons for Decision

The tenancy is a 'relevant tenancy' for the purposes of regulation 3.

The Applicant made an application to the Tribunal timeously in terms of regulation 9, having lodged the application not later than three months after the tenancy ended.

The Respondent was candid in his acceptance of his breach of his duties under regulation 3 by failing to lodge the deposit timeously.

That being the case, the only issue for the Tribunal to determine was the Order to be made in light of that acceptance.

In terms of Regulation 10, the Tribunal must order the Respondent to pay to the Applicants an amount not exceeding three times the amount of the tenancy deposit (Regulation 10(a)).

The Tribunal has taken into account the submissions of all parties and all of the documentation before it.

The Tribunal has an "unfettered discretion" as to the amount of compensation to be paid under regulation 10(a) (see *Fraser and Pease v Meehan* (2013 SLT (Sh Ct) 119 per Sheriff Mackie at p 121). The Tribunal is also mindful of the need to proceed in a manner that is fair, proportionate and just having regard to the circumstances of the case including the seriousness of the breach and the purpose of the regulations (see *Tenzen v Russell* 2014 GWD 4-90; *Kirk v Singh* 2015 SLT (Sh Ct) 111; *Jenson v Fappiano* 2015 SCEdin 6).

The Tribunal has taken into account that the Applicants were not provided with the information from the Landlord detailing the scheme into which the deposit had been paid. It notes that the Landlord's responsibilities were set out in the lease and the Applicants rightly were relying on the Landlord complying with his obligations.

The Tribunal accepts that the Respondent was not aware of his responsibilities and was relying on the services of his professional letting agent, to whom the tenancy deposit was paid. The Respondent was candid in that acceptance. He is not a professional landlord. This was his property purchased when he lived in Edinburgh and before he and his wife moved back to New Zealand. It was his first and only rental property in Scotland. The Tribunal accepts that the Respondent's breach was due to ignorance rather than a wilful breach. The Tribunal has taken into account that the Respondent has since sought advice from the Scottish Landlords Association and has appointed a new letting agent in respect of the property.

The Tribunal is also mindful of the purpose of the Regulations. The Regulations were introduced in order to protect the tenancy deposit throughout the duration of the tenancy and for parties to have access to the dispute resolution procedures should they require them. Amateur landlords are not exempt from compliance.

In this case, dispute resolution was not required and the Applicants received their deposit back in full. However, that does not escape the fact that for the period from 30 June 2015 to 20 August 2015 the deposit was not lodged in an approved scheme, was unprotected and exposed to potential risk (including the risk of the letting agents going into liquidation) for that period.

The maximum penalty the may be imposed is three times the deposit (in this case £2580). The Tribunal does not consider that the seriousness of the breach in this case merits an order for payment at that highest level. Exercising its discretion and taking into account all the circumstances, and in particular the fact the deposit was at risk and unprotected for only the period between 30 June 2015 and 20 August 2015, the Tribunal orders the Respondent to make payment to the Applicants the sum of £200 in total.

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.

Ms Lesley Johnston

Legal Member

Date

5/3/19