



**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/18/1818

Re: Property at 25a Church Street, Fife, KY11 1LG (“the Property”)

Parties:

**Mr Richard Mortimer, Mrs Laura Mortimer, 26 Cash Feus, Strathmiglo, Fife,
KY14 7QX (“the Applicants”)**

Mr Paul Simpson, 40 Forbes Road, Fife, KY11 2AN (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent was in breach of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) and that the Respondent must pay the Applicants an amount equivalent to three times the Applicant’s deposit of £400.00 making a total of £1200.00

Background

1. By Application dated 12 July 2018 the Applicants complained to the Tribunal that the Respondent had failed to lodge their Tenants Deposit in an Approved scheme. In support of their application the Applicants submitted a copy of their tenancy agreement and correspondence between the parties.
2. Following further communication between the applicants and the Housing and Property Chamber the Application was accepted by a legal member with delegated powers on 27 August 2018.
3. A Case Management Discussion was assigned to take place on 5 October 2018 at Five Voluntary Action, 16 East Fergus Place, Kirkcaldy. Due to

intimation not being given to the Respondent of the date of the Case Management Discussion the hearing was adjourned and a fresh Case Management Discussion assigned to take place on 30 October 2018 at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy. Intimation of the hearing was given to the Respondent by Sheriff Officers on 15 October 2018.

Case Management Discussion

4. The Case Management Discussion took place on 30 October 2018. It was attended by the Applicants. There was no appearance by the Respondent. The Tribunal proceeded with the Case Management discussion in the Respondent's absence in accordance with Rule 29 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 (2the Rules").
5. The Applicants confirmed that they had entered into a short assured tenancy agreement with the Respondent that commenced on 1 July 2016 and endured for a period of six months and then from month to month thereafter.
6. The Applicants stated that they had paid a deposit of £400.00 to the Respondent at the commencement of the tenancy. They had never been provided with information that the deposit had been paid into an approved scheme.
7. The Applicants said that they were told by the Respondent that they would have to vacate the property as it was being sold. The respondent gave them first refusal to purchase it but they had not wished to do so. The lease was terminated on 30 April.
8. The Applicants referred to the correspondence that had passed between themselves and the Respondent. They had requested their deposit back less the cost of a second hand fridge freezer but had never received anything.
9. The Applicants said they had contacted the three tenancy deposit scheme administrators to enquire if their deposit had been lodged by the Respondent. They said that all three had advised them they had no record of their deposit being lodged. As a result they had made the application to the Tribunal.
10. The Applicants said that the Respondent had contacted them by telephone the previous week after he had been found the Tribunal papers on his return from holiday. The Applicants said the Respondent had offered to pay them back their deposit and they had provided him with their bank account details. However, as at the commencement of the Case Management discussion no funds had been paid into their account.
11. The Applicants in reply to a question from the Tribunal said they thought the Respondent had other let properties. They did not know how many but knew of at least one other in Rosyth.

12. The Applicants indicated that what they were looking for was the return of their deposit. They accepted that this was not something the Tribunal could order the Respondent to do.

Findings in Fact

13. The Applicants were the tenants of the Respondent under a Short Assured Tenancy from 1 July 2016 until 30 April 2018.
14. The applicants paid the Respondent a deposit of £400.00 at the commencement of the tenancy in July 2016.
15. The Respondent failed to lodge the deposit in an approved Tenancy Deposit Scheme in terms of Regulation 3 of the 2011 Regulations.
16. The Respondent did not refund the Applicants deposit to them at the end of the tenancy.
17. The Applicants made an application to the Tribunal under Regulation 9 of the 2011 regulations timeously.
18. The Respondent failed to lodge the Applicants deposit in an approved scheme over a period of 22 months during which the Applicants deposit was not secured.

Reasons for Decision

19. The application was brought timeously in terms of Regulation 9(2) of the 2011 Regulations.
20. Although the Respondent was not present to offer an explanation the Tribunal was satisfied given that the short assured tenancy agreement did not mention the deposit being lodged in an approved scheme; the Applicants had never been give intimation from the Respondent that the funds had been deposited in such a scheme and the three scheme administrators had apparently no record of the Applicants deposit that it was more likely than not that the Respondent had not lodged the deposit in an approved scheme and was therefore in breach of Regulation 3 of the 2011 Regulations which provide that a tenant's deposit must be lodged in an approved scheme within 30 working days of the commencement of the tenancy.
21. Given that the Respondent was in breach of Regulation 3 the Tribunal had to consider the appropriate amount to award the Applicants whilst exercising the discretion open to the Tribunal. In determining what a fair, proportionate and just sanction in the circumstances of the application should be the Tribunal took account of the facts so far as could be ascertained in the absence of the Respondent. It appeared to the Tribunal that this was a serious breach. This was because the Applicants deposit had been unprotected throughout the period of their tenancy. The Respondent apparently had other properties that

he rented out and therefore clearly ought to have been aware of the importance of complying with the 2011 Regulations. Furthermore the Respondent had been given the opportunity to appear before the Tribunal to explain his actions but had not done so nor had he repaid the Applicants deposit to them. In all the circumstances the Tribunal could see no mitigating factors and awarded the maximum amount to the Applicants of three times the deposit namely £1200.00.

Decision

22. For the foregoing reasons the Tribunal orders the Respondent in respect of his breach of Regulation 3 of the 2011 Regulations to make payment to the Applicants the sum of £1200.00 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.

Graham Harding

Legal Member/Chair

Date

30 October 2018