

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 Regulations 9 and 10 of the Tenancy
Deposit Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/18/2065

**Re: Property at 3 Auldgavel Place, Strathaven, South Lanarkshire, ML10 6DE
("the Property")**

Parties:

**Mr Fraser West, Mrs Marion West, 16 Overton Avenue, Strathaven, South
Lanarkshire, ML10 6NR ("the Applicants")**

**Ms Anne Law, 2 Argyle Steet, Stonehouse, Larkhall, ML9 3LL ("the
Respondent")**

Tribunal Members:

Neil Kinnear (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that**

Background

This is an application dated 6th August 2018 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 2011 Regulations").

The Applicants provided with their application copies of the tenancy agreement, information and correspondence from the three deposit schemes, and various copy e-mail correspondence.

The Case Management Discussion

A continued Case Management Discussion was held on 11th December 2018 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Second Applicant appeared, and also represented her husband, the First Applicant. The Respondent appeared accompanied by her husband Mr Allan Law, and was represented by Ms Hanlon, letting agent.

The Second Applicant advised that she sought compensation for the late lodging of her deposit with a deposit protection scheme. At the end of the tenancy in July 2018, she made enquiry about which scheme it was lodged with which revealed that it had not been lodged.

She brought this to the attention of the Respondent's letting agent, who subsequently did lodge the deposit on 8th August 2018, after the end of the tenancy. The tenancy commenced on 10th April 2017, so the deposit should have been lodged within 30 days of that date in terms of the 2011 Regulations.

The Second Applicant had previously had a bad experience with a different letting agent, where she stated that letting agent had failed to lodge the deposit with an appropriate scheme and subsequently absconded without repaying it.

As a result, she became very stressed and anxious on realising that her deposit had not been protected, and required to take two weeks off her work as a result. She produced a letter from her employer confirming this. She had lost two weeks wages totalling £1,350.00.

The Respondent confirmed that she accepted that she bore legal responsibility for lodging the deposit as landlord. She was unaware it had not been lodged as her letting agent was meant to have dealt with that.

Ms Hanlon confirmed that the deposit had not been lodged, as it should have been, within 30 days of 10th April 2017, and was extremely apologetic. The member of staff working for her in April 2017 had subsequently had to leave her employment, as the staff member had become unable to cope in her job.

That member of staff should have attended to lodging the deposit, but clearly had not done so. Ms Hanlon accepted that was the case, that it was her responsibility, and candidly accepted that she would have to bear the consequences. She indicated that her letting agency would reimburse the Respondent whatever monetary award was made against her by the Tribunal.

All of those in attendance indicated that they had no submissions on the level of compensation that the Tribunal should award, and were all content to leave the level of award to the Tribunal's discretion.

Reasons for Decision

It was accepted by the Respondent that this application was brought timeously in terms of regulation 9(2) of the 2011 Regulations.

Regulation 3 of the 2011 Regulations (which came into force on 7th March 2011) 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.”

The Respondent as landlord was required to pay the deposit into an approved scheme. She accepts that she failed to do so, under explanation noted above that her letting had failed to attend to this, as she ought to have.

Regulation 10 of the 2011 Regulations provides as follows:

- “If satisfied that the landlord did not comply with any duty in regulation 3 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 required under regulation 42.”

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

In the case of *Jenson v Fappiano* 2015 G.W.D 4-89, Sheriff Welsh opined in relation to regulation 10 of the 2011 Regulations that there had to be a judicial assay of the nature of the non-compliance in the circumstances of the case and a value attached thereto which sounded in sanction, and that there should be a fair, proportionate and just sanction in the circumstances of the case. With that assessment the Tribunal respectfully agrees.

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.

In determining what a fair, proportionate and just sanction in the circumstances of this application should be, the Tribunal took account of the fact that the Respondent's letting agents, when they first became aware that the deposit had not been protected, within a relatively short space of time transferred the deposit amount to the scheme. They also immediately accepted responsibility, and were apologetic for their oversight.

Balanced against that is the fact that as the Respondent's letting agent candidly accepted, it was her responsibility as a professional letting agent to lodge the deposit, and that had not been done until after the tenancy had ended. The deposit was unprotected for a period of approximately 15 months, and throughout the entire duration of the tenancy.

The Tribunal accepts there are some mitigating factors in respect of the sum to be awarded in the exercise of its judicial discretion, for the reasons outlined above.

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 £1,700.00 (twice the amount of the tenancy deposit) is an appropriate sanction to impose.

Decision

For the foregoing reasons, the Tribunal orders the Respondent in respect of her breach of Regulation 3 of the 2011 Regulations to make payment to the Applicants of the sum of £1,700.00 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.

Neil Kinnear

Legal Member/Chair

11/12/18

Date