



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit
Scheme (Scotland) Regulations 2011
Chamber Ref: FTS/HPC/PR/22/3962**

Re: Property at 216 Millfield Hill, Erskine, PA8 6JL (“the Property”)

Parties:

Mrs Yvonne Owens, 216 Millfield Hill, Erskine, PA8 6JL (“the Applicant”)

Mr Ranbir Patwal, 1/1 48 Maxwell Drive, Glasgow, G41 5JT (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should be ordered to make payment to the Applicant of the sum of ONE THOUSAND FIVE HUNDRED POUNDS (£1.500)

Background

1. By application dated 25 October 2022, the applicant sought an order in terms of Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”) in respect of an alleged failure by the respondent to comply with those regulations..
2. On 3 November 2022, the application was accepted by the Tribunal and referred for determination by the tribunal.
3. A Case Management Discussion (CMD) was set to take place on 3 February 2023 and appropriate intimation of that hearing was given to all parties

The Case Management Discussion

4. The Case Management Discussion (CMD) took place on 3 February 2023. The applicant attended personally. The respondent was neither present nor represented
5. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters. The tribunal asked various questions of the applicant with regard to the application.
6. The tribunal explained to the applicant the maximum award which could be made in terms of the 2011 Regulations
7. The tribunal indicated that it would be entitled to utilise the power within regulation 17 of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the tribunal rules") and that the tribunal could make a final decision at the case management discussion without remitting the matter to a further full hearing.

Discussion at the CMD

8. The applicant confirmed to the tribunal the date of commencement of the tenancy, the amount of deposit taken, the date the deposit was lodged with an appropriate tenancy deposit scheme and the date upon which the tenancy ended. The tribunal noted that the respondent had also emailed the tribunal on 8 December 2022 confirming these Matters
9. The applicant indicated that she only became aware that the deposit was not protected when she made arrangements to remove from the property. She had been given notice to leave by the respondent and took steps to obtain alternative accommodation. She entered into a new tenancy agreement for that property. She paid a deposit for that property. She stated that she received a notification from the relevant tenancy deposit scheme within an hour of paying the deposit. That caused her to become suspicious that the deposit paid the respondent had not been similarly lodged.
10. She emailed the respondent and asked him to provide the details of the lodging of the deposit, but he failed to do so, and simply indicated to her that the deposit would be returned to her when she removed.
11. The applicant indicated that when she entered into the tenancy the respondent told her that he had a portfolio of properties and that he ran this portfolio as a business. She indicated that she has carried out various checks online with the various tenancy deposit schemes and cannot find any trace of

any other property owned by the respondent in respect of which a deposit has been lodged.

12. The applicant was asked to comment upon the emails which had been lodged by the respondent with the tribunal. In these emails, the applicant indicated that his failure to lodge the deposit at the commencement of the tenancy was caused by a genuine error which had arisen because his mother had become seriously unwell. He claimed in his email that his mother had undergone surgery in Gravesend, Kent in late July 2018 and had spent five weeks in hospital in intensive care.
13. The tribunal may have had sympathy for the respondent if he had lodged the deposit after his mother had left hospital and such lodging was only shortly outside the required statutory period. However that was clearly not the situation which had arisen.
14. In his email of 5 January 2023 to the tribunal, he claimed that his error was “rectified speedily once the error came to light”. If that is correct then it would support the applicant’s position that the deposit was only lodged when she asked about it after obtaining her new tenancy. The respondent had neglected to lodge this deposit for a period well in excess of four years.
15. The respondent indicates that if the applicant had reminded him to lodge the deposit at any point over the four years then he would have done so. It is not a responsibility of a tenant to tell a landlord to lodge a deposit. The legal duty lies squarely and firmly with the landlord alone. It is a matter for a landlord to ensure that they comply with the relevant legal requirements.

Findings in fact

16. A tenancy agreement was entered into between the parties which commenced on 7 August 2018
17. A deposit of £700 was taken on behalf of the respondent at the commencement of the tenancy
18. The deposit was not paid into an approved tenancy deposit scheme until 27 October 2022
19. The tenancy ended on 4 November 2022

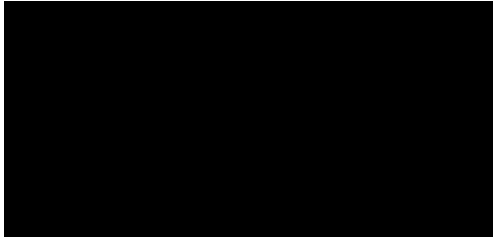
Discussion and reasons for decision

20. The failure to lodge the deposit constituted a clear failure to comply with the landlord's obligations in terms of the 2011 Regulations. This application related to the failure of the Respondent to place a tenancy deposit within an approved tenancy deposit scheme. Landlords have been required since the introduction of the 2011 Regulations to pay tenancy deposits into an approved scheme within 30 working days of the commencement of the tenancy.
21. In this case it was accepted by the Landlord (in terms of his email) that they had required to lodge the deposit but had failed to do so. Accordingly the landlord was in breach of the duties contained in Regulation 3 of the 2011 Regulations. Those duties are twofold. There is a requirement to pay the deposit to a scheme administrator and the requirement to provide a Tenant with specified information regarding the tenancy deposit. The Respondent failed in both duties.
22. Regulation 9 of the 2011 Regulations indicates that if a Landlord does not comply with any duty in regulation 3 then the Tribunal must order that a Landlord makes payment to the Tenant of an amount "not exceeding three times the amount of the tenancy deposit".
23. Accordingly in this case the Tribunal is required to make an order for payment. The only matter to be determined by the Tribunal is the amount of the payment.
24. In this case the Tribunal carefully considered the evidence which had been produced by the applicant. There was clear evidence that the respondent had failed to pay the tenancy deposit into the appropriate scheme within the required period of thirty working days. It had taken over four years for him to do so and it was only done when the tenancy was being terminated .
25. The Tribunal noted that in an Upper Tribunal decision (reference 2019 UK 39 UTS/AP/19/0023) that Sheriff David Bickett sitting on the Upper Tribunal had indicated that it was appropriate for the Tribunal to differentiate between Landlords who have numerous properties and run a business of letting properties as such, and an "amateur" Landlord who has one property which they own and let out. The Sheriff indicated in the decision that it would be "inappropriate" to impose similar penalties on two such Landlords. In this case the respondent is a landlord who had claimed to the applicant that he had more than one property available for rent and that he was involved in letting houses as a business .
26. Prior to the jurisdiction to determine these applications becoming part of the jurisdiction of the First-tier Tribunal, the applications were determined in the Sheriff Court. There were numerous Sheriff Court decisions which have been reported.

27. In many of these cases, the Sheriff Courts have indicated that the Regulations were introduced to address what was a perceived mischief and that they will be meaningless if not enforced.
28. In a decision by Sheriff Principal Stephen at Edinburgh Sheriff Court in December 2013, the Sheriff Principal indicated that the court was “entitled to impose any penalty including the maximum to promote compliance with Regulations”. (***Stuart Russell and Laura Clark v. Samdup Tenzin*** 2014 Hous.L.R. 17)
29. The Regulations were introduced to safeguard deposits paid by Tenants. They were introduced against a background of Landlords abusing their position as the holder of deposit moneys. The Scottish Parliament decided that it should be compulsory to put the deposit outwith the reach of both the landlord and the tenant and that there was a dispute resolution process accessible to both landlord and tenant at the end of a tenancy and which placed them on an equal footing. The Regulations make it clear that the orders to be made by Tribunals for failure to comply with the Regulations are a sanction or a penalty.
30. In this case, the Respondent was in clear and blatant breach of the 2011 Regulations. The tribunal considered whether it should make an award at the maximum range. The respondent had not attended the CMD. The emails from him provided an explanation of the failure but did not provide any proper mitigation of the failure to lodge the deposit in accordance with the Regulations. The deposit was unprotected for a period of more than four years and was lodged only within the last two weeks of the tenancy
31. The tribunal accordingly considered that this was a significant breach of the regulations which required to attract a penalty towards the higher end of the available range.
32. The landlord should be well aware of the requirement to lodge deposits in accordance with the 2011 Regulations. He does not seem to fall within the category of “amateur” landlord. No proper mitigation had been offered to the tribunal by the landlord
33. The tribunal was not persuaded that the award should be made at the maximum level available to the tribunal which based on the deposit being £700 would have been £2.100. The tribunal took the view that the appropriate award should be £1.500 being just over twice the deposit, reflecting the very serious failure by the landlord in this case.
34. The tribunal also decided to exercise the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

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.



Legal Member/Chair

Date: 3 February 2023