



**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/18/2649

**Re: Property at Flat 3/3, 44 Helenvale Street, Glasgow, G31 4TF (“the
Property”)**

Parties:

Ms May McKenzie, c/o 2 Dalness Crescent, Glasgow, G32 7RJ (“the Applicant”)

**Mrs Ashley Dabudabu, Flat 0/1, 15 Tollcross Park View, Glasgow, G32 8UA
 (“the Respondent”)**

Tribunal Members:

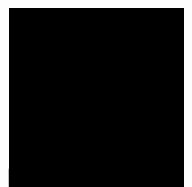
Andrew Upton (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment by the Respondent to the
Applicant in the sum of ONE THOUSAND THREE HUNDRED AND FIFTY
POUNDS (£1,350.00) STERLING should be granted.**

FINDINGS IN FACT

1. On 21 May 2018, the parties entered into a private residential tenancy agreement in respect of the Property, where the Applicant was the tenant and the Respondent was the landlord;
2. In terms of clause 6 of the tenancy agreement, a tenancy deposit of £450 was due by the Applicant to the Respondent and was paid;
3. The keys to the Property were returned by the Applicant to the Respondent on 16 July 2018, after she had been told to leave by the Respondent;



4. The Private Residential Tenancy terminated on 16 July 2018;
5. The Respondent did not pay the tenancy deposit into an approved scheme, or provide the information prescribed in Regulation 42 of the 2011 Regulations to the Applicant;
6. The Applicant's representative wrote to the Respondent on 27 July 2018 in relation to the deposit, but no response was received;

FINDINGS IN FACT AND LAW

1. The Respondent is a relevant person within the meaning of section 83(8) of the Antisocial Behaviour etc. (Scotland) Act 2004;
2. The Applicant is an unconnected person within the meaning of section 83(8) of the Antisocial Behaviour etc. (Scotland) Act 2004;
3. The Private Residential Tenancy between the parties was a relevant tenancy within the meaning of Regulation 3(1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011;
4. By failing to pay the tenancy deposit to the administrator of an approved tenancy deposit scheme and, separately, to provide the information prescribed in Regulation 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 to the Applicant, the Respondent acted in breach of Regulation 3(1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011;
5. Tribunal must make an order for payment by the Respondent to the Applicant in terms of Regulation 10 of Tenancy Deposit Schemes (Scotland) Regulations 2011 of a sum not exceeding three times the tenancy deposit; and
6. In all of the circumstances, an appropriate sanction is a sum equal to three times the tenancy deposit.

STATEMENT OF REASONS

1. This application called before the Tribunal for a Case Management Discussion on 27 February 2019 at 10.00am. The Applicant was represented by Miss Mair of Govan Law Centre. The Respondent was neither present nor represented.
2. This Application proceeds under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"). The Applicant contends that the Respondent is in breach of her duties under

Regulation 3 of the 2011 Regulations to (i) pay the Applicant's tenancy deposit into an approved scheme within the prescribed period of time, and (ii) provide the information prescribed in Regulation 42 of the 2011 Regulations.

3. In the Application, the Applicant asserts the following:-
 - a. On 21 May 2018, the parties entered into a private residential tenancy agreement in respect of the Property, where the Applicant was the tenant and the Respondent was the landlord;
 - b. In terms of clause 6 of the tenancy agreement, a tenancy deposit of £450 was due by the Applicant to the Respondent and was paid;
 - c. The keys to the Property were returned by the Applicant to the Respondent on 16 July 2018, after she had been told to leave by the Respondent;
 - d. The Respondent did not pay the tenancy deposit into an approved scheme, or provide the information prescribed in Regulation 42 of the 2011 Regulations to the Applicant;
 - e. The Applicant's representative wrote to the Respondent on 27 July 2018 in relation to the deposit, but no response was received; and
 - f. The Tribunal ought to sanction the Respondent in a sum equal to three times the tenancy deposit, which is the sum of £1,350.
4. The Application has been served upon the Respondent. She is aware of the Applicant's allegations and of the claim being made against her. She has chosen not defend the Application. Accordingly, it appears to me that she does not dispute the Applicant's assertions.
5. In terms of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017:-

"2.— The overriding objective

(1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.

(2) Dealing with the proceedings justly includes—

- (a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;
- (b) seeking informality and flexibility in proceedings;
- (c) ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party's case without advocating the course they should take;
- (d) using the special expertise of the First-tier Tribunal effectively; and
- (e) avoiding delay, so far as compatible with the proper consideration of the issues.

...

17.— Case management discussion

...



(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.”

6. Having regard to the overriding objective, it seems to me that in the interests of avoiding delay, and considering that the Respondent has not attempted to dispute the terms of the Application, it is appropriate for me to determine the Application today.
7. In terms of the 2011 Regulations:-

“3.—

(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.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A “*relevant tenancy*” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

- (a) in respect of which the landlord is a relevant person; and
- (b) by virtue of which a house is occupied by an unconnected person, unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions “*relevant person*” and “*unconnected person*” have the meanings conferred by section 83(8) of the 2004 Act.

...

9.—

(1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made no later than 3 months after the tenancy has ended.

10.

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.

...



42.— Landlord's duty to provide information to the tenant

(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).

(2) The information is—

(a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;

(b) the date on which the tenancy deposit was paid to the scheme administrator;

(c) the address of the property to which the tenancy deposit relates;

(d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;

(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and

(f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.

(3) The information in paragraph (2) must be provided—

(a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or

(b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.”

8. In terms of the Antisocial Behaviour etc. (Scotland) Act 2004:-

“83 Application for registration

...

(8) In this Part—

“*relevant person*” means a person who is not—

(a) a local authority;

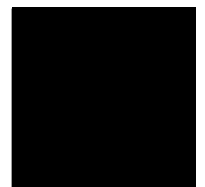
(b) a registered social landlord; or

(c) Scottish Homes; and

“*unconnected person*”, in relation to a relevant person, means a person who is not a member of the family of the relevant person.”

9. I am satisfied that the Respondent is a relevant person within the meaning of s.83(8) of the 2004 Act, and that the Applicant is an unconnected person within the meaning of that same section. I am accordingly satisfied that the tenancy here is a relevant tenancy within the meaning of Regulation 3 of the 2011 Regulations.

10. It follows that the Respondent was under a duty, in terms of Regulation 3 of the 2011 Regulations, to (i) pay the tenancy deposit received to the administrator of an approved tenancy deposit scheme, and (ii) provide the Applicant with the information prescribed in Regulation 42. I find that she has failed to do so, and that she is accordingly in breach of Regulation 3(1)(a) and (b) of the 2011 Regulations.



11. In terms of Regulation 9 of the 2011 Regulations, the Applicant was entitled to bring an application to the Tribunal consequent upon the Applicant's breach of Regulation 3 within three months of the end of the tenancy. The tenancy ended on 16 July 2018. The Application was received by the Tribunal on 5 October 2018. It was therefore raised on time.
12. In terms of Regulation 10 of the 2011 Regulations, where the Tribunal finds that a landlord has acted in breach of Regulation 3 (as I have done), it must grant an order for payment of a sum not exceeding three times the tenancy deposit. It is strict liability. The only discretion exists in relation to sanction.
13. The exercise of judicial discretion in relation to applications of this type was considered by Sheriff Welsh in *Jenson v Fappiano*, 2015 WL 376066. At paragraph 11 of his judgment, Sheriff Welsh states:-

"I consider regulation 10(a) to be permissive in the sense of setting an upper limit and not mandatory in the sense of fixing a tariff. The regulation does not mean the award of an automatic triplication of the deposit, as a sanction. A system of automatic triplication would negate meaningful judicial assessment and control of the sanction. I accept that discretion is implied by the language used in regulation 10(a) but I do not accept the sheriff's discretion is 'unfettered'. In my judgment what is implied, is a judicial discretion and that is always constrained by a number of settled equitable principles.

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 judgment.
 2. The result produced must not be disproportionate in the sense that trivial noncompliance cannot result in maximum sanction. There must be a judicial assay of the nature of the noncompliance in the circumstances of the case and a value attached thereto which sounds in sanction.
 3. A decision based on judicial discretion must be fair and just ('*The Discretion of the Judge*' , Lord Justice Bingham, 5 Denning L.J. 27 1990)."
14. I agree that this is the approach to be adopted when considering sanction.
 15. In this Application, the Respondent acted in flagrant breach of Regulation 3. She has offered no explanation for her actions. She has ignored attempts to query the position regarding the deposit. She has elected not to appear at this Tribunal. The deposit has not been repaid. The Respondent's actions, in my view, demonstrate a wilful disregard for the 2011 Regulations. Accordingly, it is my view that this case is one which sits at the extreme end of the scale of non-compliance. I am satisfied that the appropriate sanction in this case is three times the tenancy deposit.

16. Accordingly, I will grant an order for payment by the Respondent to the Applicant in the sum of £1,350, being a sum equal to three times the tenancy deposit.

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

27 FEBRUARY 2019

Date