

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

Chamber Ref: FTS/HPC/PR/18/3074

Re: Property at 46C Norway Gardens, Dunfermline, KY11 8JW ("the Property")

Parties:

**Mr Stephen Smith, Mrs Carol Anne Fallone, 14 Keir Hardie Terrace,
Dunfermline, Fife, KY11 3BX ("the Applicants")**

**Mrs Victoria McGrath, 5 Pinkerton Grove, Dunfermline, KY11 8LJ ("the
Respondent")**

Tribunal Members:

Fiona Watson (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that an order is granted against the Respondent for:**

- 1. Payment to the Applicants in the sum of ONE THOUSAND NINE HUNDRED
AND FIFTY POUNDS (£1950) STERLING; and**
- 2. Payment of the tenancy deposit sum of SIX HUNDRED AND FIFTY POUNDS
(£650) STERLING in to an approved tenancy deposit scheme in Scotland; and**
- 3. To provide the Applicants with the written information as required by
regulation 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.**

An application was submitted by the Applicants under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations"). Said application was dated 31 October 2018. Said application sought an order for payment in the sum of £1950 in terms of Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations").

A Case Management Discussion was held on 24 January 2019. The Applicants were personally present. There was no appearance by or on behalf of the Respondent.

The Applicants sought a payment order in the sum of £1950. They advised that they had paid a deposit of £650 in cash to the Respondent at the start of the tenancy, being 7 August 2018. A hand written receipt for payment of said deposit was produced by the Applicants and which appeared to have been signed by the Respondent. Alongside the application the Applicants had lodged copies of text messages with the Respondent in which they had made numerous requests for a written tenancy agreement to be produced for signature. They advised that no tenancy agreement was ever produced by the Respondent. Following the start of the tenancy, the Applicants were advised by the Local Authority that the Respondent was not registered as a landlord, as is required in terms of the Antisocial Behaviour etc. (Scotland) Act 2004. They then advised the Respondent that they wished to bring their tenancy to an end. They agreed with the Respondent to remove from the property on 6 October 2018 and the tenancy would terminate on that date. In the week prior to that date, the Respondent changed the locks to the property without their knowledge or consent, depriving them of belongings which had been left in the property. The Police were called. The Respondent has not repaid their tenancy deposit of £650. The Applicants submitted that the Respondent had failed to comply with Regulation 3 of the 2011 Regulations by:

1. Failing to pay the deposit to the scheme administrator of an approved scheme within 30 working days of the commencement of the tenancy, and
2. Failing to provide the prescribed information as is required under regulation 42 of the 2011 Regulations.

A payment order in the sum of £1950, being the maximum amount which the Tribunal could award in terms of Regulation 9 of the 2011 Regulations, was sought.

Prior to the Case Management Discussion the Respondent had submitted an email to the Tribunal office dated 22 January 2019 indicating that she was unable to attend due to work commitments. She did not request a postponement of the Case Management Discussion. The email did not state any defence to the claim under Regulation 9 of the 2011 Regulations. The email confirmed that a deposit of £650 had been taken by the Respondent from the Applicants. The email stated that the Respondent considered that she was due to retain £350 from said deposit as she had incurred costs for replacement locks, re-plastering a lounge wall and payment of yet to be determined outstanding utility bills. The email made no reference to when any moneys would be returned to the Applicants, nor did it give any explanation as to why the deposit had not been lodged with a tenancy deposit scheme.

The Tribunal was satisfied that:

1. The Applicants paid a deposit in the sum of £650 to the Respondent on or before the start date of the tenancy being 7 August 2018;

2. The Respondent was under a duty to pay said deposit into an approved scheme within 30 working days of the start date of said tenancy under regulation 3 of the 2011 Regulations;
3. The Respondent was under a duty to provide prescribed information to the Applicants in terms of regulation 42 of the 2011 Regulations;
4. The date 30 working days after the start date of the tenancy was 18 September 2018;
5. The Respondent had both failed to pay the deposit into an approved scheme and provide the prescribed information to the Applicants by the deadline of 18 September 2018;
6. The Respondent was in breach of her duties under regulation 3(a) and (b) of the 2011 Regulations.

The Tribunal considered that the Respondent did not dispute that the deposit had not been paid into an approved scheme, in her said email of 22 January 2019. She made no reference to any reason why the deposit hadn't been paid into an approved scheme, nor the prescribed information provided. Whilst the Respondent claimed in her email that she was entitled to make deductions from the said deposit, this does not have any relevance whatsoever to the requirement on her to abide by the duties imposed under the 2011 Regulations. The purpose of the 2011 Regulations is to provide a safeguard to ensure that tenancy deposits are held safely and securely, and that parties to a tenancy agreement have access to an adjudication process to fairly determine any deductions to be made from a tenancy deposit. The lodging of a deposit into an approved scheme puts both parties to a tenancy agreement on an equal footing. It ensures that unscrupulous landlords cannot unfairly retain tenancy deposits for no good reason. The Respondent's failure to lodge the deposit into an approved scheme has resulted in there being no such safeguard in place for the Applicants and they have been deprived of the opportunity to apply to the scheme for return of the deposit themselves and have an independent adjudicator determine any deductions to be made to the deposit. The deposit has now been held by the Respondent for over 4 months, and with nothing having been returned to the Applicants and no proposals made for any such return, putting the Applicants at significant disadvantage.

The Tribunal was satisfied that there had been a clear breach of regulation 3 of the 2011 Regulations and there was no good reason for the Respondent's failure or inability to comply. The Tribunal was also concerned that the Respondent had made no efforts to return all or part of the deposit to the Applicants by the date of the Case Management Discussion. The Tribunal was satisfied that an award should be made under regulation 10 (a) of the 2011 Regulations for the maximum amount permitted, being £1950.

Furthermore, in order to allow the parties an opportunity to have an adjudicator determine whether any deductions should be made to the deposit or not, the Tribunal determined that the Respondent must both pay the deposit of £650 into an approved tenancy deposit scheme, and also provide the prescribed information to the Applicants under regulation 42 of the 2011 Regulations.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for:

1. Payment to the Applicants in the sum of ONE THOUSAND NINE HUNDRED AND FIFTY POUNDS (£1950) STERLING; and
2. Payment of the tenancy deposit sum of SIX HUNDRED AND FIFTY POUNDS (£650) STERLING in to an approved tenancy deposit scheme in Scotland; and
3. To provide the Applicants with the written information as required by regulation 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

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.

Fiona Watson

Legal Member/Chair

Date

24/1/19