

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules")

Chamber Ref: FTS/HPC/PR/18/3134

**Re: Property at Flat 1/1, 8 Cranston Street, Glasgow, G3 8GG
("the Property")**

Parties:

**Mr Marco Avarucci and Ms Alberta Capasso, Flat 1/1, 3 Kelbourne Street,
Glasgow, G3 8PE
("the Applicants")**

**Mr Robert Stevenson, Hillside Cottage, Bellesdale Avenue, Largs, KA30 9EF
("the Respondent")**

Tribunal Members:

**Susanne L. M. Tanner Q.C. (Legal Member)
Gordon Laurie (Ordinary Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") determined that an order must be made in terms of Regulation 10 of the 2011 Regulations requiring the Respondent to pay to the Applicants the sum of ONE THOUSAND FIVE HUNDRED POUNDS (£1500.00) Sterling

1. Procedural background

1.1. On 21 November 2018, the Applicants made an application ("the Application") to the tribunal in terms of Regulation 9 of the Tenancy Deposit

Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") and Rule 103 of the 2017 Rules.

1.2. The Applicants seek an order for payment for two times the amount of the deposit payable in respect of their tenancy of the Property (deposit of £1300.00).

1.3. The Applicants attached to the Application:

1.3.1. a copy of the short assured tenancy agreement dated 2 April 2018;

1.3.2. Council Tax notices to 31 August 2018 (adjustment to occupational liability period) and new address from 1 September 2018 onwards;

1.3.3. Email correspondence confirming end of tenancy at 5.00pm on 31 August 2018;

1.3.4. Deposit receipt from Respondent to Applicants for payment of £1300.00 deposit on 2 April 2014, stating that the deposit will be held by the Respondent until termination of rental period and returned in full subject to any deduction following inspection of the Property for loss or damage;

1.3.5. A receipt confirming return of deposit money by Respondent to Applicants on 31 August 2018 in cash.

1.4. On 11 December 2018, the Applicant was requested to provide information from the three approved tenancy deposit schemes in Scotland that their tenancy deposit was not paid to them and was not currently held by them.

1.5. On 11 December 2018 the Applicant provided screen shots from all three approved tenancy deposit schemes stating that the deposit is not protected.

1.6. On 8 January 2019 the Application was accepted for determination by the tribunal.

1.7. On 23 January 2019 the parties were advised of the date, time and place of a Case Management Discussion ("CMD"). The Respondent was invited to submit written representations by 11 February 2019. Parties were advised that the tribunal can do anything at a CMD which it may do at a hearing, including making a decision on the Application which may involve making or refusing a payment order. Parties were advised that if they do not attend the CMD this will not stop a decision or order being made by the tribunal if the

tribunal considers that it has sufficient information before it to do so and the procedure has been fair.

1.8. On 11 February 2019, the Respondent lodged written representations. These were crossed over to the Applicants.

1.9. On 14 February 2019, a Case Management Discussion took place. Reference is made to the Notes of the Case Management Discussion which were prepared by the Legal Member and distributed to parties. The Notes of the CMD include agreed facts. The Respondent admitted that the Applicants' deposit had not been lodged throughout the tenancy.

1.10. Directions were issued by the tribunal on 3 March 2019, requiring the Respondent to provide specified information by 12 March 2019.

1.11. On 12 March 2019, the Respondent submitted written representations to the tribunal in response to the Directions. They were crossed over to the Applicants.

2. Hearing – 19 March 2019 at 1000h at Glasgow Tribunals Centre, York Street, Glasgow

2.1. A hearing took place at 1000h on 19 March 2019 at Glasgow Tribunals Centre, Glasgow.

2.1.1. The First Applicant attended the Hearing on behalf of himself and the Second Applicant.

2.1.2. The Respondent attended the Hearing.

2.2. Written and oral Submissions by the First Applicant

2.2.1. The First Applicant referred to the deposit which was issued by the Respondent at the start of the tenancy which states that he was keeping the deposit. The tenancy agreement stated that the Landlord would keep the deposit.

2.2.2. The First Applicant stated that he found out before the tenancy ended that a private landlord has duties to lodge a tenant's deposit. Prior to that he did not have an expectation that a deposit should be protected by a private landlord. His previous Scottish tenancy was through an agency and they protected the deposit. The Applicants did not check if it was the

same for a private tenancy or not. The Respondent issued him with a receipt for the deposit. He was not aware that it was mandatory for a private landlord to lodge the deposit.

2.2.3. The First Applicant stated that in summer 2018, while he was still living in the Property, he saw a leaflet regarding tenancy deposit protection at the University where he works. He did not contact his Landlord once the leaflet was obtained. It was quite a busy period. He did not follow up on the issue at that time.

2.2.4. The First Applicant confirmed that his deposit had been repaid directly in full within three days of the tenancy ending.

2.2.5. The First Applicant stated that he first raised the issue after the tenancy ended. He did not raise it with the Landlord. He made the Application to the tribunal in November 2018. He said that he had not raised it at the time he found out about the duty on Landlord because he was busy. He did not take advice before making the Application. He enquired online with the tribunal.

2.2.6. On 3 September when Mr Stevenson repaid the deposit in person the Applicants had recently bought a flat and it was an extremely busy period. The Applicants did not mention the deposit at that time.

2.2.7. By way of background, the First Applicant stated that the Applicants entered into discussions with the Respondent about the possibility of buying the property in around April 2018. It was just a discussion between the parties. At some point he phoned a solicitor and asked for advice. They were concerned a bit about a possible planning application. The solicitor advised them. They found out that there was planning permission for a multi storey just in front of the flat which had been conditionally granted in 2017. They decided to not proceed with the purchase. The discussions ended in around May 2018. A Section 33 notice was issued by the Respondent (without a Notice to quit). On being asked by the tribunal why these facts were relevant, the First Applicant stated that it is relevant because when the Respondent answered the Directions he made a series of statements that are quite misleading and questioned the Applicants' motivation in bringing this Application to the tribunal.

2.2.8. The First Applicant referred to the Respondent's position in the CMD as recorded in the Note, paragraph 11. He stated that he did not think that the points raised by the Respondent about the end of the tenancy were relevant to this Application.

2.2.9. The First Applicant then referred to the Respondent's direction response and stated that he did not see any logical connection between whether he was intending to take an action for the end of the tenancy and his motivation for this Application. The First Applicant took issue with the fact that the Respondent has stated that he has raised this action on the basis that he is vexatious. The only reason it was discussed in the CMD was because the Respondent claimed that in his opinion the Applicants were supposed to move at the end of July and according to his interpretation the deposit application was submitted late. In the CMD it was agreed that the Application was submitted in time. The First Applicant stated that he thinks that the allegation that he is vexatious is defamatory and there are absolutely no grounds for saying that.

2.2.10. Respondent's oral submissions

2.2.10.1. The Respondent stated that the Property was valued by two valuers in April 2018. It was agreed that in doing so they would then have a value that the Applicants could consider for the purchase of the Property. It was February 2018 when they had the meeting in the flat. The property was valued in April 2018. It was agreed that if the Applicants went forward the Applicant would pay for the Home Report. The Applicant decided not to go forward for various reasons, one being the planning permission on the site opposite.

2.2.10.2. The tribunal chair asked why the factual background about the proposed purchase was relevant to his admitted failure to lodge the tenancy deposit and provide the prescribed information. The Respondent stated that it was relevant to the Applicant's reason for making the Application. The Respondent does not think it has been made because the Respondent did not put money in a deposit scheme. He stated that the Applicant bought another property and wanted time to modernise. The Respondent served what he thought was the correct notice, a Section 33 notice, during the summer of 2018. The Applicant stated at the CMD that he was still considering legal action because the Respondent had not issued the correct notice to quit. After the Respondent sent the notice he got a response saying it had been received. The Respondent anticipated that the property would be vacated. Within one week of the end of July 2018 the Respondent was advised that the Applicants were not leaving and that they were of the view that the Respondent had not issued the correct notice. There was no discussion about the deposit

at that stage. The Respondent noted that the First Applicant had said earlier in the hearing that the reason was that he was too busy.

2.2.10.3. The Respondent further stated that the First Applicant was aware of the fact that the Respondent had not put the money in the deposit scheme he would have submitted that with his Application but had not done so. The Respondent stated that was only in December 2018 that evidence was produced from the three tenancy deposit schemes. The tribunal chair noted that that was on the request of the tribunal and prior to referral of the Application for determination. The Respondent accepted that there was evidence in the form of the tenancy agreement and the receipts issued at the start and end of the tenancy.

2.2.10.4. The Respondent stated that the First Applicant said that he was still considering legal action. The Respondent got in contact with a solicitor and asked them to correspond with the Applicants. A date was agreed of 31 August 2018 and rent was paid up to the end of the tenancy. TC Law suggested 15 August. The Respondent wanted to market the property for sale. He was conscious it was running out of the marketing period. They have had to rent it out again. They now use letting agents.

2.2.10.5. The Respondent stated that he has one flat. He is not an experienced landlord. This is the first tenancy he has dealt with as a private landlord under the new Regulations. His daughter went to Uni, then stayed in the flat until 2010. The intention was to sell and they could not do so. This is the first tenancy to a non-family member using the same documentation that his daughter used for renting out a room. There was one tenancy from 2010 until Mr Avarucci and his partner moved in. The property has subsequently been let out. The people he appointed to sell it are both the selling agent and the letting agent. He does not have any other properties in his name or his wife's name. This is the only property he has ever let out.

2.2.10.6. The Respondent stated that he was bemused to receive the Application from Sheriff Officers. He did not know that there was any issue. The Applicants came to the end of their tenancy. They had an extra month to carry out works to their own property. The rent was paid up to the 31 August 2018. The flat was fine, there were no issues at all, it was spotless. The Respondent stated that it was relevant that the Applicant had not raised the issue with the

Respondent despite knowing about the duties. The Applicant lodged a week before the end of the three month period.

2.2.10.7. On response to a question from the ordinary member, the Applicant stated that the solicitors had seen the tenancy agreement but had not had any discussions with them about deposit protection.

2.2.10.8. In relation to his position on the level of any payment order, the Respondent stated that the Applicant has stated that he is going for two times as he thinks that three times is too severe. The Respondent thinks twice the deposit is still severe as the Applicants have had all of their deposit money back. The Respondent is not sure about the motivation to prove that the Respondent did something wrong or to do with the notice period because they wanted longer in the flat with their timescale and the Respondent stopped them from having that by the lawyer agreeing 31 August 2018. The Respondent thinks that getting money via the deposit scheme is a secondary matter, as a means of getting money from the Respondent. There is no financial loss. They would have had it on the evening of the Friday had the property been vacated. The Respondent had to come back up to Glasgow on the Monday to return the deposit.

2.2.11. Applicant's Response

2.2.11.1. The Applicant stated that he works to deadlines. There was no strategy and the Application was on time. The deadline is there for a reason. He cannot prove it. It is just his word. He has no obligation to enquire about the deposit being lodged or not. The first tenancy he had in Scotland was for more or less one year with an agency and we got the deposit protected. He admits that he did not do his homework for private landlords so he did not check for this tenancy. The Respondent clearly gave him a receipt with the intention of keeping the deposit himself. His point was a legal point regarding the end of the tenancy and they reached a reasonable solution in the middle. He do not think that the things that the Respondent has said that the Applicants are taking this action as a substitution for something else are correct. The Applicant finds this speculation is aimed to discredit him. He is very precise. He knows that there is no reason to pursue the Respondent for not taking the eviction process. He is a researcher at the University. He wanted to be informed and then take action, according to the law. He did not raise with the Respondent or the solicitors when they were corresponding regarding eviction.

2.3. Reasons for decision

2.3.1. Regulation 3 of the 2011 Regulations provides:

(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.

2.3.2. Regulation 9 of the 2011 Regulations provides:

“(1) A tenant who has paid a tenancy deposit may apply to the [First-tier Tribunal] 1 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 [...] 2 no later than 3 months after the tenancy has ended.”

2.3.3. Regulation 10 of the 2011 Regulations provides that: *“[i]f 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;...”

2.4. Findings-in-Fact

2.4.1. The Applicants paid a tenancy deposit of £1300.00 to the Respondent on 1 May 2014.

2.4.2. A Short Assured Tenancy for the Property commenced on 1 May 2014.

2.4.3. The Short Assured Tenancy ended on 31 August 2018.

2.4.4. The Applicant's deposit of £1300.00 was not protected in a tenancy deposit protection scheme at any time.

2.4.5. The Respondent did not provide the Applicants with the information required in terms of the 2011 Regulations in the time period specified.

2.4.6. The deposit was repaid by the Landlord to the Applicant in full on 3 September 2018.

2.4.7. The first admission by the Respondent that the deposit had not been protected was in his written representations of 11 February 2019.

2.5. Findings in Fact and Law

2.5.1. The tribunal was satisfied that the Respondent did not comply with the duties in regulation 3 of the 2011 Regulations in respect of the Applicants' tenancy deposit of £1300.00.

2.5.2. Being so satisfied, the tribunal must make an order in terms of Regulation 10 of the Regulations for an amount not exceeding three times the amount of the tenancy deposit.

2.6. Discussion

2.6.1. The tribunal took account of the Applicants' written and oral submissions; and the Respondents' written and oral submissions.

2.6.2. In particular the tribunal had regard to the fact that the deposit was unprotected for a period in excess of four years. The tribunal took account of the fact that the Respondent is a first time landlord (the only other tenancy being prior to the 2011 Regulations coming into force). The tribunal also took account of the fact that the deposit was repaid in full promptly at the end of the tenancy. The purpose of the deposit protection scheme is to provide protection for tenants' deposit and a mechanism for resolving disputes. The tribunal considered that the Applicant was unaware of his duties and did not consider that there was any wilful failure on his part.

2.6.3. The tribunal did not accept the Respondent's submissions that there was any underlying motivation on the Applicants' part in making this Application and even if there had been there was an admitted breach of the Regulations on the part of the Respondent.

2.6.4. For the reasons outlined, the tribunal decided to make an order for £1500.00, which is one times the deposit plus £200.00.

2.6.5. The tribunal chair informed the parties that the Payment order would be made against the Respondent for £1500.00 and could be enforced by the Applicants against him after the expiry of the permission to appeal period.

3. 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.


Susanne L M Tanner Q.C.
Legal Member/Chair

19 March 2019