

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/18/2665

**Re: Property at 2/1, 76 Highburgh Road, Glasgow, G12 9EN
 (“the Property”)**

Parties:

**Miss Sofia Boutsaki and Mr Alexander Stylos, Upper Flat, 26 Newton Farm Road, Cambuslang, G72 7UJ
 (“the Applicants”)**

**Mr Anton Balchin, c/o Vanilla Square, 711 Great Western Road, Glasgow, G12 8QX
 (“the Respondent”)**

**Vanilla Square, 711 Great Western Road, Glasgow, G12 8QX
 (“the Respondent’s Representative”)**

Tribunal Member:

Susanne L. M. Tanner Q.C. (Legal 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 TWO THOUSAND NINE HUNDRED AND EIGHTY FIVE POUNDS (£2985.00) Sterling

1. Procedural background

- 1.1. On 7 October 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 up to three times the amount of the deposit payable in respect of their tenancy of the Property (up to three times £995.00).
- 1.3. The Applicants attached to the Application:
 - 1.3.1. Sections from the Tenancy Agreement Pack including AT5 Form dated 1 February 2017 (full tenancy agreement not available);
 - 1.3.2. Evidence of the date of the end of the tenancy (Council Tax statement);
 - 1.3.3. Evidence of payment of the deposit (bank statement).
- 1.4. On 18 October 2018 the tribunal requested that the Applicants provide confirmation from the three Tenancy Deposit Scheme administrators that they have no record of the Respondent lodging the deposit with them or written confirmation from the Respondent confirming that they did not lodge the deposit in an approved scheme.
- 1.5. On 24 October 2018 the Applicants provided confirmation from the three tenancy deposit scheme administrators (Letting Protection Scotland, My Deposits Scotland and Safe Deposits Scotland) that there is no record of the Respondent lodging the Applicants’ deposit.
- 1.6. On 16 November 2018 the tribunal requested that the Applicants provide evidence of the end date of the tenancy, for example notices or other correspondence with the Respondent or Respondent’s agent or a receipt for handover of keys and evidence that Vanilla Square is the agent of the Respondent and it is authorised to receive service of documents on behalf of the Respondent, which failing an address for the Respondent for service.
- 1.7. On 29 November the Applicants provided confirmation of end date of tenancy as 14 July 2018 and email correspondence with Vanilla Square in which the agents confirming that they are acting and advising the Applicants to serve documents care of the Respondents’ Representative.

1.8. On 9 January 2019 the Application was accepted for determination by the tribunal.

1.9. On 4 February 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 20 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. The notification and Application documentation were served on the Respondent care of an employee of the Respondent's Representative on 5 February 2019.

1.10. The Respondent and the Respondent's Representatives did not submit and written representations or make any contact with the tribunal's administration following service of the notification and Application documentation.

1.11. On 19 February 2019 the Applicants submitted the following documents in advance of the CMD: (1) a redacted bank statement showing a Faster Payment credit entry for 19 September 2018 for £210 from "Vanilla Square Let Deposit Return CBCEB1007282329015" and email correspondence with the Respondent's representative relative to the deposit sent by the Applicants to the Respondent's Representative on 14 and 19 September 2018 asking for provision of the deposit protection scheme information. Copies of the documents were provided to the Respondents' Representative by email of 21 February 2019.

2. CMD – 26 February 2019 at 1000h at Glasgow Tribunals Centre, 20 York Street, Glasgow, Room 110

2.1.A CMD took place at 1000h on 26 February 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow, Room 110,

2.1.1. Mr Alexander Stylos, the second Applicant, appeared on behalf of himself and as representative of the first Applicant. He submitted a letter of authority signed by the first Applicant and confirmed that she is his partner. A copy of the letter was retained by the tribunal's administration.

2.1.2. Mr Innes Allan, Managing Partner of the Respondent's Representative appeared on behalf of the Respondent.

2.2. Oral Submissions by the Applicants

2.2.1. Mr Stylos said that a £995 deposit was paid by the Applicants to the Respondent's Representative's account on 16 January 2017, as shown on the bank statement lodged with the Application paperwork. He explained that the reason that there were two debit entries shown on 16 January 2017 and a credit entry shown on 17 January 2017 was that the deposit was paid twice by mistake and one of the payments was refunded to their account the following day.

2.2.2. In relation to the start date of the tenancy, Mr Stylos confirmed that it began on 1 February 2017, which is the same day that the AT5 form was signed. The AT5 in the Application paperwork is dated 1 February 2017.

2.2.3. Mr Stylos confirmed that the tenancy ended on 14 July 2018, as shown in the end of tenancy paperwork submitted to the tribunal.

2.2.4. Mr Stylos referred to ongoing enquiries made by the Applicants to the Respondent's Representative in relation to the deposit and whether/where it had been protected. He referred to the emails of 14 and 19 September 2018, over two months after the end of the tenancy, asking where the deposit had been protected. That was the last correspondence concerning the deposit.

2.2.5. Mr Stylos said that the balance of the deposit, after agreed deductions, was paid back into his account and his partner's account on 19 September 2018. They both received a payment of £210, totalling £420. The payments were made by the Respondent's Representative and did not come from a tenancy deposit scheme. The Applicants were unhappy that it had taken so long for the deposit to be refunded after the tenancy ended, despite agreeing deposit deductions in an effort to resolve matters quickly. There was no reason provided by the Respondent's Representative as to why it took so long. Mr Stylos said that Because of the delay in repaying the deposit, the Applicants had decided that they wanted to dispute the previously agreed amount, as they had only agreed the deductions in the hope that the balance would be returned shortly after the end of the tenancy. Two months in, without a refund, they wanted to dispute the amount of the proposed deposit refund. The Applicants asked the Respondent's Representative where the money was secured so that they could contact the scheme and see what they

could do about it. After their second enquiry the balance of the money was return to their two bank accounts without any correspondence from the Respondent's Representative.

2.2.6. The Applicants are seeking three times the amount of the deposit (£2985.00) in respect of the Respondent's failure to lodge the same throughout the period of the tenancy and beyond and failure to provide the required information about deposit protection.

2.2.7. Oral submissions by Respondent's Representative

2.2.7.1. Mr Allan said that there is no dispute that deposit of £995.00 was paid by the Applicants into the client account of Vanilla Square on 16 January 2017.

2.2.7.2. Mr Allan admitted that the deposit was not protected with one of the three statutory schemes at any time.

2.2.8. The tribunal chair asked whether there was any explanation for the failure to lodge the Applicants' deposit, to provide the required information in terms of the Regulations or to respond to the Applicants' requests for information until any point until today, 26 February 2019.

2.2.9. Mr Allan stated that it the deposit was not lodged and the information was not provided due to a clerical error. He stated that for whatever reason the paperwork was not processed by one of their members of staff and passed to him or Karen for processing. He said that he and Karen are the only two individuals who have access to banking. The paperwork was not passed to them with the reference number. He said that they normally lodged deposits with MyDepositScotland. He first stated that he thought it had been processed but that the deposit had not been transferred to the scheme. After being asked about the terms of the written response from My Deposits Scotland which had been lodged by the Applicants with the tribunal, and showed that no deposit for the Applicants and the Property was registered with my Deposits Scotland, Mr Allan accepted that it was never processed. He said that after the lease was signed, it should have been processed and a piece of paper should have been passed to him. He accepted that the evidence shows that the reference number was not generated and the process of deposit protection had not been started.

2.2.10. The tribunal chair asked if there was a reason why it was not picked up at any stage that the deposit had not been registered and the Applicants had

not been provided with the required information. Mr Allan stated that he does not actually know why it was not picked up. He said that the member of staff who should have processed it is no longer with the business. He did not offer any explanation about why the failure was not identified at any later stage.

2.2.11. The tribunal chair asked Mr Allan when it was first picked up that the deposit had not been lodged. Mr Allan said that he had not realised at any stage but he thought that Karen would have realised that it had not been lodged. He said that because it was not lodged, the £420 was paid back to the Applicants' accounts on 19 September 2018 from the client account. He accepted that there was no correspondence to the Applicants.

2.2.12. The tribunal chair asked Mr Allan if there was a reason that on 14 and 19 September, over two months after the end of the tenancy, there was no admission or apology to the Applicants that the deposit had not been lodged, despite the Applicants' repeated enquiries and statement that they wished to raise issues via the deposit protection scheme. Mr Allan offered no explanation. Mr Allan accepted that the first occasion he or anyone in his organisation has said that the deposit has not been lodged was today during the CMD, 26 February 2019.

2.2.13. (The Applicant interjected and confirmed that there has been no communication by the Respondent's Representative since the Application was lodged on 7 October 2018).

2.2.14. The tribunal chair asked Mr Allan if he had any submissions to make in respect of the Applicants' claim for three times the deposit amount of £995.00. Mr Allan stated that he would request a lower figure because it was a clerical error on their part and mistakes happen. He is now fully accepting that the deposit was not lodged. He accepted that the Applicants had not been told until February 2019 that the deposit had not been lodged despite their requests for information and that there had been no admission or apology.

2.2.15. Mr Allan confirmed that service of the decision and order on the Respondent should be effected via the Respondent's Representative's business address.

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 £995.00 to the Respondent's Representative on 16 January 2017.

2.4.2. A Short Assured Tenancy for the Property commenced on 1 February 2017.

2.4.3. The Short Assured Tenancy ended on 14 July 2018.

2.4.4. The Applicants' deposit of £995.00 was not protected in a tenancy deposit protection scheme.

2.4.5. The Respondent's Representative did not process the deposit with any of the three statutory deposit protection schemes or transfer the funds for protection.

- 2.4.6. The Respondent did not provide the Applicants with the information required in terms of the 2011 Regulations in the time period specified.
- 2.4.7. The Respondent did not admit the failure to lodge the Applicants' deposit in a scheme despite repeated requests by the Applicants to the Respondent's Representative for information about deposit protection after the tenancy had ended.
- 2.4.8. The Respondent's Representative repaid £420.00 of the Applicants' deposit, after deductions, from its client account to the Applicants' accounts on 19 September 2018.
- 2.4.9. There was no communication from the Respondent's Representative to the Applicants at the time that the balance of the deposit was repaid or at any time up to 26 February 2019 to inform the Applicants that the deposit had not been protected.
- 2.4.10. No written representations were lodged by the Respondent or his Representative in response to service of the Application paperwork and documentation and notification of the CMD.

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 £995.00.
- 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 submissions and evidence and oral submissions; and the Respondent's Representative's oral submissions.
- 2.6.2. In particular the tribunal had regard to the fact that the deposit was unprotected for the period from 16 January 2017 until 19 September 2018, a period of 20 months (over two months of which were after the tenancy had ended on 14 July 2018). The tribunal also had regard to the fact that at no point until the CMD on 26 February 2019, did the

Respondent or his Representative admit or apologise to the Applicants for the failure to protect the deposit or provide the required information, despite repeated requests from the Applicants for information about deposit protection. The tribunal did not accept the fact that the original mistake was due to a clerical error was a reason for awarding a lower amount than the three times sought, in the circumstances outlined. There was a wilful failure to admit the failure over a period of months, as evidenced in the email correspondence lodged by the Applicants and in circumstances where the Applicants indicated that they wished to initiate a dispute through the scheme when the deposit had not been returned by 14 September 2018. The purpose of the deposit protection scheme is to provide protection for tenants' deposit and a mechanism for resolving disputes. In the present Application the Applicants wished to dispute the Respondent's failure to repay their deposit through an approved scheme, as they should have been entitled to do, and were unable to do so.

2.6.3. For the reasons outlined, the tribunal decided to make an order for three times the tenancy deposit of £995.00, namely £2985.00.

2.6.4. The tribunal chair informed the parties that the Payment order would be made against the Respondent for £2985.00 and could be enforced by the Applicants against him after the expiry of the permission to appeal period; and informed the Respondent's Representative that any issues as between the Respondent and the Respondent's Representative were not an issue in the present Application and could be settled between themselves or by another method.

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 Tanner

26 February 2019

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