



**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/19/3344**

**Re: Property at Honeysuckle Cottage, Bridge Street, Halkirk, Caithness, KW12  
6XY (“the Property”)**

**Parties:**

**Ms Jacqueline Ford as executor for the late Sandra Dawn Ford, 91 Donaldswood  
Park, Glenburn, Paisley, Renfrewshire, PA2 8RT (“the Applicant”)**

**Mr Kevin Smith, The Bothy, Sinclair Street, Halkirk, Caithness, KW12 6XT (“the  
Respondent”)**

**Tribunal Members:**

**Jim Bauld (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that that the Respondent should be ordered to make  
payment to the Applicant of the sum of NINE HUNDRED POUNDS (£900).**

**Introduction**

1. In this application, the applicant seeks a payment 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. Previous Case Management Discussions had taken place on 23 December 2019 and 24 February 2020. The application was then continued to a further Case Management Discussion (CMD) which took place on 24 July 2020.

## **The Case Management Discussion**

2. At the commencement of the CMD the tribunal reviewed with the parties what had been agreed at the previous case management discussions.
3. It was noted that parties agreed that there had been a tenancy of the property in which the applicant's mother was the tenant and the respondent was the landlord. That tenancy had commenced on 22nd May 2017. The tenancy was a short assured tenancy and parties had agreed the tenancy ended on 31st July 2019.
4. It was accepted that a deposit had been taken. The applicant's position was the deposit was £380. The respondent's position was that the deposit was only £375 notwithstanding what was clearly stated in the tenancy agreement.
5. The tribunal explained the provisions of the 2011 Regulations to the parties and obtained confirmation from the respondent that a tenancy deposit had been taken. The respondent also confirmed that the deposit has not been paid into any approved tenancy deposit scheme. The respondent therefore acknowledged, upon questioning by the tribunal, but the tribunal was required to make an order in terms of the 2011 regulations.
6. The tribunal asked further questions of the respondent and noted that he had been a landlord for approximately 15 years and had had four different tenants within this property. He had taken deposits from all of them and at no point has ever paid any into a tenancy deposit scheme. He accepted that he had not been registered as a landlord but had now done so although he intended to let that registration lapse as he has now decided that he did not wish to be a landlord.
7. The respondent indicated that he had only become aware of the existence of the 2011 regulations when he himself had rented a flat as a tenant in Aberdeen about 18 months ago. He had rented the flat from a work colleague who told him that the deposit would be placed into a tenancy deposit scheme. Even at that stage he did not think that he should place the deposit he had taken into such a scheme. He indicated that the tenancy agreement which had been signed by the parties had been drawn up by a solicitor who had never mentioned the tenancy deposit schemes to him.
8. It was indicated to the respondent that the tenancy which he used made clear and specific reference to the tenancy deposit scheme. There was a specific clause headed "deposit" which in two separate sub-paragraphs mentioned the 2011 regulations and the requirement that the deposit should be paid into such a scheme. The respondent could not explain why he did not pay the deposit into the scheme.
9. The tribunal indicated to the parties, given the respondent's admissions, that an award required to be made under the regulations. The tribunal explained to the parties the maximum award which could be made. The tribunal noted that

parties did not agree on the actual amount of the deposit which had been paid but given that the difference was only £5 the tribunal indicated to the parties that such an amount was insignificant and was not a matter which the tribunal would regard as critical in its decision

10. The tribunal confirmed that both parties were happy that the tribunal utilised the power within regulation 17 of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the tribunal rules") that the tribunal could make a final decision at the case management discussion without remitting the matter to a further full hearing.
11. The tribunal asked the applicant what level she believed the award should be made. She indicated that she believed the maximum award should be made given the history of the tenancy, the landlord's admitted failure to pay the deposit into a scheme and the fact that the tenancy agreement made clear reference to the relevant regulations. It was also clear from the applicant's written and oral submissions to the tribunal that she was unhappy with the respondent's conduct during the months leading up to her mother's death.
12. The respondent indicated that he was sorry that he had not paid the deposit into the scheme and was aware that the tribunal would require to make an order

### **Findings in fact**

13. A tenancy agreement was entered into between the respondent and the applicants mother on 22 May 2017 in respect of the property
14. A deposit of £375 was taken by the respondent
15. The deposit was never paid into an approved tenancy deposit scheme
16. The applicant mother died on 2 July 2019. The applicant is the executor of her late mother in terms of a will
17. Parties agreed that the tenancy ended on 31 July 2019
18. The deposit was repaid by the respondent to the applicant on 20 August 2019

### **Reasons for Decision**

19. 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. In this case it was accepted that the Landlord had failed to do so. Accordingly he 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.

20. 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 3 times the amount of the tenancy deposit”. Accordingly in this case the Tribunal required to make an order for payment. The only matter to be determined by the Tribunal is the amount of the payment.
21. in this case the Tribunal carefully considered the evidence which had been produced. The evidence was of a Landlord who had knowledge of the relevant law and practice. There was clear evidence that he had failed to pay the tenancy deposit into the appropriate scheme for the whole period of the tenancy (a period of over three years)
22. 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 a 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 appeared to be a landlord who only had one property available for rent.
23. 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.
24. 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.
25. 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)
26. 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 parliament decided that it should be compulsory to put the deposit outwith the reach of both the Landlord and the Tenant to ensure 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.

27. In this case, the Respondent was in clear and blatant breach of the Deposit Scheme Regulations. The tribunal considered whether it should make an award at the maximum range. The respondent offered little mitigation of his conduct. His claim that he was unaware of the 2011 Regulations was undermined by the clear reference to the regulations within the tenancy agreement itself. Even if he had been initially unaware of the existence of the 2011 Regulations, he had by his own admission become aware of them during the currency of the tenancy and still took no steps to make a payment into an approved deposit scheme. 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. 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 £375 would have been £1125. If the tribunal had excepted the deposit was £380 the maximum award would only be £1140. The tribunal took the view that the appropriate award should be £900 being approximately 80% of the maximum award available

### **Decision**

28. The Tribunal awards payment of the sum of NINE HUNDRED POUNDS( £900) to be paid by the Respondent to the Applicant.

### **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.**

**Jim Bauld**

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**Legal Member/Chair**

**24/07/2020**

**Date**