



**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/20/1175

Re: Property at Flat 0/2, 80 Firhill Road, Glasgow, G20 7AL (“the Property”)

Parties:

**Miss Ecaterina Mucomilov, Mr Paul Marian Pop, 21H, Harvie Street, Glasgow,
G51 1BW; 21H, Harvie Street, Glasgow, G51 1BW (“the Applicants”)**

**Mr William Rae, 77 Muirside Avenue, Kirkintilloch, Glasgow, G66 3PP (“the
Respondent”)**

Tribunal Members:

Graham Harding (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that a payment order be made in the sum of £2587.50
against the Respondent in favour of the Applicants**

Background

1. By application dated 11 May 2020 the Applicants applied to the Tribunal for an order against the Respondent in respect that it was alleged the Respondent had failed to lodge the Applicants’ deposit paid at the commencement of the lease in an approved Tenancy Deposit Scheme in terms of Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicants submitted a copy of the Tenancy agreement, copy receipt for the deposit and confirmation of the date of the end of the tenancy.
2. By Notice of Acceptance dated 18 May 2020 the Chamber President accepted the application and a Case Management discussion was assigned.

3. Intimation of the Case management Discussion was sent to the Applicants by post on 3 July 2020 and served on the Respondent by Sheriff Officers on 6 July 2020.

The Case Management Discussion

4. A Case Management Discussion was held by teleconference on 5 August 2020. Both the Applicants and the Respondent attended. The Tribunal explained the purpose of the Case Management discussion and confirmed that if the Tribunal was satisfied that it had sufficient information before it to day it could make a final decision failing which the Case Management Discussion could be adjourned either to another Case Management Discussion or to a full hearing of the Tribunal.
5. Mr Pop on behalf of the Applicants confirmed that the tenancy between the parties had commenced on 11 November 2016 and had ended on 10 March 2020. Mr Pop said that the first month's rent and the deposit of £862.50 had been paid to the Respondent's agents Clyde Letting.
6. For his part the Respondent said that his contract with Clyde was only to find a tenant for the property. After that he managed the tenancy himself. He accepted that the payments had been made and that the deposit had been paid to him by the Letting agents.
7. The Respondent went on to say that he had lodged the deposit with My Deposits Scotland. For the Respondents Mr Pop confirmed this was the case but that the deposit had not been lodged until July 2020 some four months after the tenancy had ended and only after the Respondent had been given intimation of these proceedings. The Respondent confirmed this was the case.
8. The Respondent went on to explain that he had kept the Applicants' deposit in a separate bank account that was effectively ring fenced and called tenants deposit account. He confirmed the funds would have been in that account throughout the duration of the tenancy having received them from the letting agents probably in about November 2016.
9. The Respondent said that at that time he would have had one other property rented out but that now he only had one property. He explained that he was a registered landlord and had been renting out property for about 10 years. He said he was aware of the Tenancy Deposit scheme and that he had previously put tenants deposits in the scheme. The Respondent went on to say that he had experienced a problem with a tenant receiving a deposit back and he had been left out of pocket as a result of having to make good repairs. As a result, he said that being once bitten he was twice shy and had determined not to be caught out again and therefore kept the deposit in his own bank in a separate account in his name. He thought this was quite secure and the tenants would be able to get back their deposit after deduction of any deductions for damage caused.

10. The Tribunal referred the Respondent to the terms of Regulation 3 of the 2011 Regulations and queried with the Respondent if he understood that there was a legal requirement upon him to lodge the deposit in an approved Tenancy Deposit Scheme. The Respondent appeared to indicate that whilst that might be the case the Applicants' funds had nonetheless been quite secure in his bank account for the duration of the lease.
11. The Tribunal then referred the Respondent to Regulation 9 of the 2011 Regulations and queried if it was accepted that the Applicants had submitted their application to the Tribunal within the statutory period of three months of the ending of the tenancy and that there had been a breach of Regulation 3. This was accepted by the Respondent.
12. The Tribunal then referred the Respondent to the terms of Regulation 10 and to the fact that where the Tribunal was satisfied that there had been a failure on the part of the Respondent to comply with the duties in Regulation 3 the Tribunal must impose a monetary penalty not exceeding three times the deposit paid by the Applicants. The Tribunal sought to ascertain from the Respondent if he understood that this was the case and asked the Respondent what he had to say in mitigation.
13. The Respondent said that there were a number of issues he wished to raise as when he had gone to check the property after the Applicants had vacated it he had identified a number of breaches of the terms of the contract namely Clauses 6.1 damage to the property; 10.4 failure to take reasonable care of the property; 10.6 alteration to the property by fitting a Bluetooth light fitting; 14.7 fixtures and fittings and 14.9 the cost of repairing through fault or negligence damage to kitchen unit and work surface. The Respondent went on to say the property required to be deep cleaned and re-decorated and he had subsequently discovered that the cooker hood was not working and the filter had been removed. Finally, the Respondent said that he accepted that the deposit was not in a scheme but it was ring fenced in his bank account and would have been paid to the Applicants after deduction for any damage.
14. Having heard from the parties the Tribunal was satisfied that it had sufficient information before it to make a decision without the need for a further hearing.

Findings in Fact

15. The parties entered into a Short Assured Tenancy Agreement that commenced on 11 November 2016 and ended on 10 March 2020.
16. The Applicants paid a deposit of £862.50 to the Respondent's letting agents Clyde Letting at the commencement of the lease.
17. The letting agents transferred the Applicant's deposit to the Respondent in about November 2016.

18. The Respondent placed the deposit in a bank account in his name throughout the duration of the tenancy.
19. The deposit was lodged with My Deposits Scotland in July 2020 after the Respondent was made aware of these proceedings.
20. The deposit remains with My Deposits Scotland.

Reasons for Decision

21. 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 until July 2020. 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.
22. 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.
23. 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).
24. 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 had been letting properties for about ten years and had at the relevant time two rental properties.
25. The Regulations were introduced to address the perceived mischief of landlords making deductions from tenants deposits without the tenant having an opportunity to dispute the validity of such deductions. It is therefore important that the Regulations are enforced in order that there is a fair and transparent scheme to adjudicate upon landlords claims against tenants deposits.

26. In this case the Respondent quite deliberately and blatantly did not lodge the Applicants deposit in an approved scheme despite being well aware of the need to do so. He did not do so because on a previous occasion a tenant had successfully been able to recover his deposit from the scheme leaving the Respondent to pay for what he considered damage caused by the tenant.
27. The Tribunal is entitled to take account of what may be considered an error or an oversight on the part of a Respondent and reduce the sanction imposed accordingly. Equally where a Respondent acts wilfully to avoid the terms of the legislation the Tribunal is entitled to treat such actions seriously and consider imposing a sanction at the upper end available. Before making its decision the Tribunal afforded the Respondent the opportunity to address it in mitigation. The Respondent rather than showing any remorse for his actions sought once again to justify them by suggesting that because the funds had been placed in a separate bank account although still in his sole name they were in some way “ring-fenced” when in fact they were clearly still an asset open to a claim by creditors in the event of his sequestration. Furthermore the Respondent sought to justify the alleged breaches of the tenancy agreement by the applicants as a mitigating factor when this was clearly a matter for adjudication by the Scheme Administrators.
28. 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). The Tribunal has carefully considered the information before it and is of the view that the shockingly cavalier attitude adopted by the Respondent knowing full well of his obligations to comply with the terms of the 2011 Regulations coupled with his total lack of remorse for his actions justifies the imposition of the maximum sanction available and accordingly the tribunal awards the Applicants three times the deposit of £862.50 making a total of £2587.50.

Decision

29. The Tribunal awards payment to the Applicants by the Respondent in the sum of £2587.50

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.

**Graham Harding
Legal Member/Chair**

**5 August 2020
Date**