



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy
Deposit Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/18/0790

**Re: Property at 1A Kirkhill (Golfclub), Greenlees Road, Cambuslang, G72 8YN
("the Property")**

Parties:

Ms Lynn McCorry, 2 Carlowrie Avenue, Blantyre, G72 8HZ ("the Applicant")

**Mr Greig McMahon, Mr Greig McMahon, 34a Buchanan Drive, Rutherglen, G73
3PE; 38 First Gardens, Glasgow, G41 5NB ("the Respondent")**

Tribunal Members:

G McWilliams (Legal Member) and E Currie (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that an order for payment by the Respondent to the
Applicant of the sum of £600.00, in terms of Regulation 10(a) of the Tenancy
Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"),
should be made.**

Background

1. This Application, dated 17th April 2018, was brought in terms of Rule 103 (Application for order of payment where Landlord has not paid the deposit into an approved scheme) of the First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended ("the 2017 Regulations").

Case Management Discussion

2. A Case Management Discussion ("CMD") was held on 4th July 2018 at Glasgow Tribunals Centre, 20 York Street Glasgow. The Applicant and the

Respondent attended. At the CMD, it was established that the Respondent had not complied with the duty set out in Regulation 3(1) of the 2011 Regulations, in that he had not paid the Applicant's tenancy deposit, of £1200.00, into an approved scheme until April 2017, following the commencement of the tenancy in April 2013. A Hearing was assigned in order that the parties could bring witnesses and any other documentation which would support their positions in respect of the amount of sanction to be imposed upon the Respondent as a result of his non-compliance.

Hearing

3. A Hearing took place at Glasgow Tribunals Centre on 30th August 2018. The Applicant and Respondent attended. They did not bring any witnesses. The Respondent brought various photographs in respect of alleged damage to the property at the end of the tenancy. He acknowledged that the issue of such damage was not relevant to the current proceedings. The Respondent also produced a copy of the parties' tenancy agreement. The Applicant accepted that it was a true copy.
4. The Applicant submitted to the Tribunal that the Respondent had failed to comply with the Regulations and she sought an award of three times the amount of the tenancy deposit in terms of Regulation 10 of the 2011 Regulations. She stated that the Respondent let more than one property and should have complied. She stated that the Respondent was a director of GRM Developments Ltd whose business was to let properties. The Applicant stated that the Respondent had used a letting agent in respect of the tenancy of the Property. She stated that she was unaware of the Respondent's duty to pay the deposit into an approved scheme until she received notification that he had paid, in a letter from The LPS Scotland dated 7th April 2017. She stated that she asked the Landlord regarding the meaning of the letter. She did not make any complaint in this regard at that time. The Applicant stated that she moved out of the Property in February 2018.
5. The Respondent submitted that he was unaware of the requirement to comply with the Regulations until he spoke with a letting agent in April 2017. He stated that he complied as soon as he became aware of the relevant requirement and paid the deposit sum of £1200.00 to The LPS Scotland in April 2017. He stated that he had rented his first home after moving into the Property. He then rented the Property to the Applicant. The Respondent stated that he had considered using a letting agent for the rental but had not done so. The Respondent stated that he let his properties personally and not through a limited company. The Respondent stated that the tenancy formally ended on 4th May 2018. He further stated that the issue of non-compliance with the requirement to pay the deposit into an approved scheme had not arisen until after the tenancy ended, when the parties were in dispute regarding repayment or otherwise of the deposit to the Applicant. He stated that the issue of repayment or otherwise of the deposit had been dealt with by an Adjudicator appointed in terms of the Regulations. He stated that the Adjudicator's decision was that the deposit should not be repaid to the

Applicant. He apologised for not paying the deposit into an approved scheme until April 2017 and stated that he would not fail to comply with the Regulations in the event that he let any properties in the future. In this regard he stated that he was currently carrying out repairs to the Property and was developing his first home and that neither property was rented. The Respondent acknowledged again that his claim in respect of the Applicant's alleged damage to the Property would have to be dealt with separately.

Findings in Fact

6. The Applicant was the tenant of the Property between April 2013 and around February 2018.
7. The Applicant paid a deposit of £1200.00 to the Respondent in April 2013 in respect of the tenancy.
8. The Respondent has leased two properties, both of which he had previously resided in. He leased them in a personal capacity.
9. The Respondent was not aware of his requirement to pay the deposit monies into an approved scheme until April 2017. He paid the monies to The LPS Scotland as soon as he became aware of the requirement. The Parties were not in dispute in respect of the tenancy at that time.
10. The Applicant contacted the Respondent when she received a letter from The LPS Scotland, dated 7th April 2018. She did not make any complaint regarding the late payment of the deposit monies into a scheme at that time.
11. The Applicant did not make any complaint regarding the late payment of the deposit monies into a scheme until April 2018 when she lodged her Application with the Tribunal. At that time the parties were in dispute regarding the issue of repayment of the deposit to the Applicant.

Reasons for Decision

12. The Application was brought timeously in terms of regulation 9(2) of the 2011 Regulations.
13. Regulation 3 of the 2011 Regulations (which came into force on 7th March 2011) provides as follows:
“(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.”

14. The Respondent, as landlord, was required to pay the deposit into an approved scheme. He accepted from the outset of these proceedings that he failed to do so for some four years, until April 2017.

15. Regulation 10 of the 2011 Regulations provides as follows:

“If 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; and

(b) may, as the First-tier Tribunal considers appropriate in the circumstances of the application, order the landlord to—

(i) pay the tenancy deposit to an approved scheme; or

(ii) provide the tenant with the information required under regulation 42.”

16. The Tribunal was satisfied that the Respondent did not comply with his duty under Regulation 3, and accordingly must order the Respondent to pay the Applicant an amount not exceeding three times the amount of the tenancy deposit.

17. In the case of *Jenson v Fappiano* 2015 G.W.D 4-89, Sheriff Welsh, in relation to Regulation 10(a) of the 2011 Regulations, was of the opinion that there had to be a judicial analysis of the nature of the non-compliance in the circumstances of the case and a value attached to reflect a sanction which was fair, proportionate and just given those circumstances. Sheriff Welsh was of the opinion that, when determining the sanction value, the starting point was not the maximum award to be discounted by mitigating factors. He considered that this would be inconsistent with the exercise of balanced, judicial discretion.

18. In the case of *Tenzin v Russell* 2015 Hous. L. R. 11, the Court of Session reiterated that the amount of any payment in terms of Regulation 10(a) of the 2011 Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.

19. In determining a fair, proportionate and just sanction in the circumstances of this Application, the Tribunal considered and weighed all of the evidence and factors. The Tribunal found that whilst the Respondent's ignorance of the terms of the 2011 Regulations is no excuse or defence, and the deposit monies had not been protected in an approved scheme for some four years, the following factors do represent mitigation in respect of the sum to be awarded in the exercise of its judicial discretion. The Respondent had stated his position consistently at the CMD and at the Hearing. The Respondent gave his oral evidence in a straightforward and credible manner. His non-compliance with the Regulations had not arisen as a result of a deliberate act or intention on his part. The Respondent had stated that he had spoken to a letting agent in April 2017 and at that time become aware of the requirement to pay a deposit into an approved scheme. He had paid the deposit monies

into an approved scheme with The LPS Scotland, in April 2017, as soon as he became aware of the requirement to do so. The parties were not in dispute at that time and the Respondent did not have any knowledge that the tenancy was going to end. The Applicant did not make any complaint regarding non-compliance when she received a letter from The LPS Scotland in April 2017, confirming payment into their scheme.. She lodged her Application in April 2018 after she had moved out of the Property and when the parties were in dispute regarding the issue of repayment of the deposit to her. The Respondent leased the Property to the Applicant in a personal capacity. He stated to the Tribunal that he had not previously been aware of the requirement to pay a deposit into an approved scheme, in respect of either of the properties that he had let. He had resided in both of these properties before leasing them. The Respondent was not represented by a letting agent in respect of the tenancy or these proceedings. The Applicant had stated that the Respondent had used a letting agent when marketing the Property and was a director of a limited company who let properties. The Respondent had stated that he had considered using a letting agent but had not done so. The Tribunal had not received any papers which referred to the formal involvement of a letting agent, or limited company, in the tenancy or in respect of this Application.

20. The Tribunal considered and weighed all the factors in respect of the Respondent's non-compliance with the Regulations, in an effort to determine a fair, proportionate and just sanction in the circumstances of this Application. Having exercised their judicial discretion, the Tribunal found, on a balance of probabilities, that the sum of £600.00 (one half of the amount of the tenancy deposit) was an appropriate sanction to impose. The Tribunal found that this sum fairly, proportionately and justly reflected a sanction in respect of the Respondent's admitted non-compliance with the Regulations due to ignorance of the Regulations, and his immediate payment of the deposit sum into an approved scheme when he became aware of the requirement to do so, and when there was no suggestion that the parties' tenancy would end. The Tribunal further found that the amount of £600.00 was a fair and just amount to be awarded to the Applicant, who had not made any complaint regarding the non-compliance, notwithstanding her receipt of the letter from The LPS Scotland in April 2017, until the parties were in dispute regarding repayment of the deposit. Accordingly the Tribunal determined that an order for payment by the Respondent to the Applicant of the sum of £600.00, in terms of Regulation 10(a) of the 2011 Regulations, should be made.

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.

G. McWilliams

4th September 2018

Legal Member

Date