

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/PR/18/0698

**Re: Property at 19 Provost Crescent, Netherburn, Larkhall, ML9 3GE ("the
Property")**

Parties:

**Mr Thomas Jordan, Mrs Elizabeth Coyle, 5 Millgate Crescent, Caldercruix,
Airdrie, ML6 7QY ("the Applicant")**

**Miss Lisa McCluskey, 34 Toftcombs Avenue, Stonehouse, Larkhall, ML9 3QY
("the Respondent")**

Tribunal Members:

Nairn Young (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that**

- **Background**

This is an application for payment of an amount not exceeding three times the tenancy deposit paid in terms of the Applicants' tenancy agreement, on the basis that it is alleged that a duty in Regulation 3 of Tenancy Deposit Schemes (Scotland) Regulations 2011 ('the Regulations') was not complied with by the Respondent. (References will be to the Regulations, unless otherwise noted.)

The application called for a Case Management Discussion on 28 August 2018 at 10am at the Glasgow Tribunals Centre. The second Applicant was present in person. The Respondent was present in person and was represented by Mr Gildea of John Jackson and Dick Solicitors.

Findings in Fact

The following facts are not in dispute between the parties:

1. The Applicants had a relevant tenancy at the Property from 12 June 2015 to 28 February 2018. In terms of that agreement, the Applicants paid the sum of £1,042.50 as a deposit to the Respondent's agents, Clyde Property, on 12 June 2015. Information was given by Clyde Property to the Applicants on the same day suggesting that the deposit was paid to the scheme administrator of an approved scheme. That was not the case. The information included the information required to be provided in terms of regulation 42(2)(a)-(e).
2. On the termination of the tenancy, the Applicants sought repayment of the deposit and discovered the failure to pay the deposit to an approved scheme. They raised this application on 23 March 2018. Various additional information was requested by the Tribunal, meaning that the application was not intimated on the Respondent until the end of July 2018. The Respondent made an offer to pay the full deposit amount to the Applicants in mid-August 2018, which was rejected.
3. Apart from this tenancy, the Respondent has never let property. She did not see the terms of the paperwork that was signed on her behalf by her agents, Clyde Property, and provided to the Applicants.

- Reasons for Decision

4. I considered that there was sufficient agreement on the relevant facts of this case for an order to be made without the necessity to proceed to a full hearing, and that to do so would be in the interests of the parties.
5. Regulation 10 is clear that, where the Tribunal is satisfied that a landlord has not complied with a duty under regulation 3, it must order the landlord to make a payment to the tenant not exceeding three times the amount of the tenancy deposit. On the facts, as admitted, the Respondent has failed to comply with the duty in regulation 3(1)(a).
6. The Tribunal was directed to the decision made in the case of Nicholas Fraser v. Richard Calveley, a decision of the First Tier Tribunal. This followed the approach in a previous Sheriff Court case of determining the amount to be awarded on the basis that there should be, "a fair, proportionate and just sanction in the circumstances of the case." I would agree that this is the correct approach.
7. While the failure to comply with regulation 3 was a serious failure, I note that the Respondent did partially comply with its terms, in providing at least some of the information required. I also note that the Respondent does not make a business of letting properties and that this failure is therefore an isolated incident. The Respondent also did make some attempt to bring this dispute to a close in advance of the Case Management Discussion. Nonetheless, it was necessary for the Applicants to take the time and go to the trouble to raise the application in the first place.

8. Neither party requested an order for payment of the deposit into an approved scheme and, given the passage of time since the termination of the tenancy, I do not consider there to be any value in making such an order. Against that background, I was invited by the Respondent's representative to make an order only for payment of the amount of the deposit- in effect ordering the repayment of the deposit. I do not consider that such an order would carry the requisite sanction for the admitted failure to comply with the terms of the legislation. Taking into account the factors outlined in paragraph 7 above, I considered that an award of 1.5 times the deposit would represent a fair, proportionate and just sanction.

- Decision

That the Respondent be ordered to pay the Applicants the amount of £1,563.75 (ONE THOUSAND FIVE HUNDRED AND SIXTY-THREE POUNDS AND SEVENTY-FIVE PENCE STERLING)

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.

Nairn Young

Legal Member/Chair

28 AUGUST 2018

Date