



**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/18/1151

**Re: Property at New Cottage, Millhole, Newtyle, Angus, PH12 8UP (“the
Property”)**

Parties:

**Mr Stuart Edwards, Mrs Anne Edwards, Firview, Gardyne Street, Friockheim,
Arbroath, Angus, DD11 4SG; Firview, Gardyne Street, Friockhiem, Angus,
DD11 4SG (“the Applicants”)**

**Mr Alex Neillie, C/O Economy Car and Van Hire, East Perrie Street, Dundee,
DD2 2RD (“the Respondent”)**

Tribunal Members:

Petra Hennig-McFatrige (Legal Member) and Mike Scott (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for £660 in terms of Regulation 10 should
be made.**

BACKGROUND:

The Applicant Mr Edwards made an application under Rule 103 of the Rules of Procedure on 9 May 2018 for payment of the deposit funds of £660 into a Safety Deposit Scheme and for payment of 3 months rent or £1980. At that time the Applicant was stated only as Mr Stuart Edwards.

The Applicant submitted to the Tribunal tenancy agreement signed on 24 January 2018, AT5 document stating both Mr and Mrs Edwards as prospective tenants, a receipt dated 31 January 2018 and signed by the Respondent for receipt of £660 deposit consisting of £250 cash on 8 December 2017 and a further £410 on 31 January 2018 and a text message confirming the receipt of the £250 cash on 8 December 2017 between the Applicant and the Respondent. The Respondent lodged under cover letter from the Respondent dated 19 July 2018 a medical report confirming that the Respondent was on various types of pain medication following an

knee replacement in February 2018 and documentation from Safety Deposit Scotland (SDS) dated 8 May and 9 May 2018 confirming payment of the deposit into the Scheme on 9 May 2018. The two documents lodged from SDS showed two different deposit account numbers. He also lodged a text message exchange with the Applicant in February 2018.

A Case Management Discussion was fixed for 31 July 2018. The Respondent attended but the Applicant had sent emails stated he was reluctant to attend and did not wish his new address disclosed. The CMD note and directions of 31 July 2018 is referred to for its terms and held to be incorporated herein.

On 9 August 2018 the Applicant provided further information in form of a letter to them by the Respondent dated 18 June 2018, letters to the Respondent dated 22 June 2018 and 30 May 2018. The Respondent lodged documents under cover letter 15 August 2018 including the WorldPay Card transaction showing payment of the deposit amount of £660 on 10 May 2018 to SDS and a deposit summary page, Deposit Certificate Protection and another deposit summary page. On 3 October 2018 he also lodged a letter dated 2 October 2018 regarding window repairs and receipts from Tayview Windows and Buik Glass Merchants.

A further CMD took place on 5 October 2018 at which both parties were present. The CMD note is referred to for its terms and held to be incorporated herein. Prior to the nearing date of 23 November 2018 the Applicant requested his wife Anne Edwards to be recorded as a second Applicant and his daughter Coleen Edwards to be noted as the Applicant's Representative.

The Respondent lodged a written statement on 16 November 2018 with previously lodged documents appended and with documentation from SDS dated 10 October 2018 and 19 September 2018 from SDS showing the deposit had been released due to the tenants no responding to SDS, further medical certificates and printouts regarding side effects of specific medication as well as a Dundee Home Finder letter dated 2 July 2018. The Applicants lodged documents received from SDS on 18 November 2018.

The hearing:

Present at the hearing were the Applicant Mrs Edwards and her daughter Coleen Edwards as well as the Respondent with his supporter Olaf Hindmarsh. The Tribunal received a letter from Mr Edwards confirming he was not attending and was content for his wife and daughter to speak on his behalf. The first matter the Tribunal had to establish was whether or not Mrs Anne Edwards was entitled to be an Applicant in the matter as she had signed the tenancy agreement submitted as a witness. However, both parties agreed that the property had been rented to both Mr and Mrs Edwards. As confirmation was received at the hearing that the tenancy was to both Mr and Mrs Edwards the Tribunal amended the record to show that both Mr and Mrs Edwards were Applicants in the case.

The Applicant Mrs Edwards gave evidence that she and her husband had moved into the property in February 2018 and had paid the £660 deposit prior to moving in.

They were aware that the Respondent had a knee operation but had seen him at the property in March 2018 and had requested a meeting with him in April 2018 to sort out various matters. Her interpretation of the tenancy agreement is that it states that the landlord or his agent will keep the deposit and that the Respondent did not forget to lodge the deposit but had intentionally not done so. She was of the view that the Respondents suggestion he had tried to lodge the deposit "at the time" referred to January 2018 and stated that the documents from SDS show that there had been no record of any payment attempt by the Respondent at that time. She also stated that in late May 2018 the Respondent had issued them with a new lease in form of the now required documentation, had stated on this the Landlord registration and had provided the proof of the SDS receipt. However, there had been one unsuccessful lodging attempt on 8 May 2018 which had created a further account reference. She stated this all happened because she had her husband had texted the Respondent on 8 May 2018 referring to the legal requirement of the lodging of the deposit, the type of new lease, the lack of landlord registration and a request for repairs. He then stated he was in England and could not meet with them but shortly thereafter the Applicants received the documentation. The Applicants are of the view that Respondent is an experienced landlord and knew about all the requirements and had deliberately not adhered to them. They do not accept this was due to problems with his health as he had been active in March 2018 and showed no sign of confusion then.

The Respondents position at the hearing was that he does rent out various properties and has a landlord registration for them. For the property in question he was working to get this ready until the night prior to going into hospital for his knee replacement and due to the pain and medication he then made the error of not paying the funds into a safety deposit scheme and not registering the property and himself as landlord with Angus Council. He stated that he used the old style lease because he had used this for years and had not checked that it stated the landlord/his agent would retain the deposit. He was in England when the Applicants requested a meeting. He acted as soon as they had reminded him of the duty to secure the deposit, registered the property and amended his landlord registration and provided the Applicants with all the information in the new tenancy agreement, which was hand delivered to them by his joiner on 28 May 2018 as there had by then developed a relationship of distrust and he did not dare send documents by post. He said he never indicated that he had tried to lodge the deposit prior to May 2018 and that this was a misinterpretation of his representations by the Applicants. He accepted that he had no mechanism in place to deal with his landlord obligations if he was unable to do so as he dealt with the properties himself. He accepted that he had had the opportunity to lodge the deposit prior to going into hospital and had not done so.

The legal test:

In terms of Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 an application under that Regulation must be made within 3 months of the end of the tenancy. In terms of Regulation 10 "if satisfied that the landlord did not comply with any duty in Regulation 3 the sheriff 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 sheriff 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.”

In terms of Regulation 3 “(1) A landlord who had received a tenancy deposit in connection with a relevant tenancy must, within 30 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.”

In terms of Regulation 42 (2) the information includes “ (a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord, (b) the date on which the tenancy deposit was paid to the scheme administrator...(d) a statement that the landlord is , or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of 2004 Act, (e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid and (f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement. (3) the information in paragraph (2) must be provided (a) where the tenancy deposit is paid in compliance with regulation 3 (1) , within the timescale of set out in that regulation”

Findings in fact:

1. The Applicant paid a deposit of £660 to the landlord by 31 January 2018.
2. The tenancy started on 28 February 2018.
3. The Applicants moved out of the property on 30 June 2018.
4. The deposit was lodged with Safety Deposit Scotland on 10 May 2018.
5. The date the deposit should have been lodged at the latest, given the date of the commencement of the tenancy on 28 February 2018, was after 30 working days and thus on 11 April 2018.
6. There had been no attempt by the Respondent to lodge the deposit prior to him going into hospital on 6 February 2018.
7. The Respondent registered as landlord for the property in the register of Angus Council in May 2018 under landlord registration number 148333/120/21020.
8. The Respondent notified the Applicants of the deposit arrangements and the landlord registration when the relevant documents were delivered to the Applicants by his joiner on 28 May 2018.
9. The Respondent is landlord for various other properties.
10. The Respondent was unwell after a knee replacement and was on various painkillers between 6 February 2018 and April 2018.
11. The deposit has been returned to the Respondent following correspondence with SDS, who confirmed the return to the landlord due to lack of response from the tenants.

Reasons for Decision:

The tribunal considers that the landlord did not comply with the requirements of Regulations 3 and 42 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

The deposit was not paid over to SDS within 30 working days of the commencement of the tenancy agreement. The Applicants had to prompt the Respondent to lodge the deposit with a secure scheme and did so on 8 May 2018. The Respondent then

immediately attempted to lodge the deposit with SDS and succeeded to pay the deposit amount into the scheme on 10 May 2018. The deposit was thus unsecured in breach of the time limits set out in the Regulations for approximately one month.

The Respondent admits that he knows about the duty to deposit the funds safely but had used an old style tenancy agreement, which was at the time no longer valid, which referred to the deposit being held by the Landlord or his agent and thus did not give any indication to the tenant which scheme would be used.

The Respondent admits that he had not registered as landlord until May 2018 when the text message from the tenants prompted him into action.

Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 is a regulatory sanction to punish the landlord for non-compliance with the rules. The non-compliance with the Regulations is not disputed by the landlord.

As the deposit was paid into the Scheme in May 2018 the application to pay the deposit into the Scheme is no longer relevant. The Tribunal has discretion to award up to three months the amount of the deposit, in this case the upper limit would be £1,980.

Ultimately the Regulations were put in place to ensure compliance with the Scheme and the benefits of dispute resolution in cases of disputed deposit cases, which the Schemes provide.

The Tribunal took into account the length of time the deposit was unprotected, the fact that the landlord was an experienced landlord but had clearly not kept up to date with his documentation and possibly with the requirements of the legislation, that he had not put in place any mechanism to deal with matters when he was in hospital and recuperating, that he had not only not paid the deposit into an approved Scheme in time but had also neglected the duty to complete the landlord registration and advise the tenant of his registration number until May 2018 and that the landlord registration and lodging of the deposit had been completed only after he had been prompted to do so by a text message from the Applicants, which means that potentially without the text he would not have lodged the deposit or completed the registration for a further period. On the other hand the tribunal took into account that the duty to lodge the deposit with an approved scheme did not arise until the beginning of the tenancy and the landlord then has 30 working days to complete this. This time period all fell into the period after the Respondent had a knee replacement and he may well have been ill and not able to deal with matters during that time due to the medication he was on. Once he had been prompted to complete the registration he had done so very quickly. In all the circumstances the tribunal considered it fair, proportionate and just to make an order for the sum of £660 reflecting one time the deposit sum.

Decision:

The First-tier Tribunal for Scotland (Housing and Property Chamber) grants an order against the Respondent for payment to the Applicants jointly and severally of the sum of £660.00 in terms of Regulation 10 (a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

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.

P H McFatridge

Legal Member/Chair

Date

26 November 2018