



**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/19/2781

**Re: Property at High Creaganterve, Ford, Lochgilthead, Argyle and Bute, PA31
8RH (“the Property”)**

Parties:

**Miss Keri Penford Baker, Mr Anthony Lister, 4 Nursery Cottages, Minard,
Inveraray, Argyle and Bute, PA32 8YG (“the Applicants”)**

**Ms Shaaron Dahl, Casa De La Sierra, Carretera De Iznajar, Ventorros de
Balmera 14970, Cordoba, Espana (“the Respondent”)**

Tribunal Members:

Virgil Crawford (Legal Member)

Decision (in absence of the Respondent)

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

BACKGROUND

1. By lease which was undated, but in which the commencement date of the tenancy was 28 January 2018, the Applicants rented the Property from the Respondent. While the lease was undated, the tenancy was a short assured tenancy and the notice in terms of s32 of the Housing (Scotland) Act 1988 – commonly referred to as a Form AT5 – was dated 5 January 2018;
2. A tenancy deposit of £600.00 was required and was paid to the Respondent by the Applicants;
3. The deposit funds were never lodged in an approved tenancy deposit scheme in accordance with the Tenancy Deposit Schemes (Scotland) Regulations 2011;
4. The tenancy ended on 12 July 2019;

5. The Respondent thereafter returned £300.00 of the deposit to the Applicants. The balance of £300.00 has never been returned nor has any explanation been provided as to why it was not returned;

THE CASE MANAGEMENT DISCUSSION

6. Given the geographical location of the Parties the Case Management Discussion was conducted by conference call. The Applicant Keri Penfold Baker participated and represented Mr Anthony Lister also. The Respondent did not participate. The Tribunal was in receipt of a certificate of tracked air mail post relating to the intimation of the proceedings on the Respondent. In the circumstances the Tribunal, being satisfied in terms of Rule 24 of The First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the "FTT Rules") that the Respondent had received reasonable notice of the same determined that it was appropriate to proceed in accordance with Rule 29 of the FTT Rules;

FINDINGS IN FACT

7. The Tribunal made the following findings in fact:-
 - i. By lease which was undated, but in which the commencement date of the tenancy was 28 January 2018, the Applicants rented the Property from the Respondent. While the lease was undated, the tenancy was a short assured tenancy and the notice in terms of s32 of the Housing (Scotland) Act 1988 – commonly referred to as a Form AT5 – was dated 5 January 2018;
 - ii. A tenancy deposit of £600.00 was required and was paid to the Respondent by the Applicants;
 - iii. The deposit funds were never lodged in an approved tenancy deposit scheme in accordance with the Tenancy Deposit Schemes (Scotland) Regulations 2011;
 - iv. The tenancy ended on 12 July 2019;
 - v. The Respondent thereafter returned £300.00 of the deposit to the Applicants. The balance of £300.00 has never been returned nor has any explanation been provided as to why it was not returned;
 - vi. The application to the Tribunal was received on 5 September 2019

REASONS FOR DECISION

8. The TDS regulations provide as follows:-

3.(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.*

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

(a) in respect of which the landlord is a relevant person; and

(b) by virtue of which a house is occupied by an unconnected person, unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.

9.*(1) A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.*

(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.

10. *If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—*

(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 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.

References to “the sheriff” should now be read as referring to the First Tier Tribunal for Scotland.

9. The TDS regulations were introduced to address a perceived mischief whereby some Landlords secured payments of deposits from tenants, which deposits were due to be repaid at the end of the tenancy but, often, were not repaid for a variety of reasons. Previously, any dispute in relation to repayment of a deposit, in the absence of agreement between the parties, required to be referred to Court which gave rise to costs for tenants in making the necessary application. The TDS regulations are designed to ensure that the deposits paid are secured and available for repayment at the end of any tenancy and, in addition, that, in the event of any dispute, a cost free dispute resolution process is available.
10. In this case there has been a flagrant breach of the TDS Regulations and their purpose has been entirely frustrated to the detriment of the Applicants. No explanation has been provided for any failure to lodge the deposit funds with an approved scheme. No explanation has been given for failing to return the full deposit;
11. In the circumstances this case appeared to be at the upper end of cases of this nature. The Tribunal could see no reason for mitigating the maximum penalty it could impose which is an amount equivalent to three times the amount of the deposit.

DECISION

The Tribunal granted an order against the Respondent for payment of the sum of ONE THOUSAND EIGHT HUNDRED POUNDS (£1,800.00) STERLING to the Applicants

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.

V. Crawford

17 January 2020

Legal Member/Chair

Date