



**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/20/1772

**Re: Property at Flat 2 29-31 Friar's Street, Stirling, Scotland, FK8 1HA (“the
Property”)**

Parties:

**Miss Lucy Duff, Flat 2 29-31 Friar's Street, Stirling, Scotland, FK8 1HA, Mr
Tyrese Ashman, Flat 2 29-31 Friar’s Street, Stirling,Scotland FK8 1HA (“the
Applicants”)**

A&G Rentals, 13 Royal Cres, Finnieston, Glasgow, G3 7SL (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Respondent should pay to the Applicants the
sum of three hundred pounds (£300) having found that the Respondent has
breached the duties set out in Regulation 3 of the Tenancy Deposit Schemes
(Scotland) Regulations 2011.**

Background

1.This is an Application under Regulation 9 of the Tenancy Deposit Schemes
(Scotland) Regulations and Rule 103 of the Tribunal Rules of Procedure in respect
of an alleged failure to comply with the duties required of a landlord under Regulation
3 of the 2011 Regulations.

2.The Application was first lodged with the Tribunal on 21st August 2020 and
accepted by the Tribunal on 9 September 2020.

3.The Application first called for a case management discussion on 23rd October 2020 and was continued until 9th December 2020 to a further case management discussion for the Respondent to lodge evidence of a letter which the Respondent's representative indicated would demonstrate that the information required in terms of Regulation 3(b) of the Regulations had been given to the Applicants.

Case Management Discussion

4.The Applicants both attended the case management discussion on 9th December at 10am and were represented by the first Applicant Miss Duff.Mr Najafian again attended to represent the Respondent.

5.At the case management discussion on 9th December 2020 the Tribunal had sight of the application, the tenancy agreement, a letter from a tenancy deposit scheme provider and a letter from the first Applicant setting out issues in the background regarding the tenancy. On behalf of the Respondent the Tribunal had sight of a letter received on 14th October 2020 setting out the Respondent's position in relation to the payment of the deposit into an approved tenancy deposit scheme and setting out why this had been done outwith the required period. The Respondent had also lodged a letter dated 20th August 2020 which he said had been sent to the tenants by second class post, giving the information required under Regulation 3 of the Regulations.

6.In relation to this letter which appeared to give the information required in terms of the Regulations to the Applicants, Miss Duff indicated that the Applicants did not receive anything by post in connection with their tenancy but everything came by e mail. She did not accept that the letter had been received by them.

7.Mr Najafian for the Respondent indicated that these letters were always sent by the firm by second class post and as such no further proof of sending could be displayed. After discussion Mr Najafian agreed that he could, with assistance, check on his firm's computer system to see if this letter had been kept on file and if it was possible, to find out the date that the letter was created. Miss Duff agreed that this information would satisfy her on the point as to whether the letter had been provided even though she was clear that the Applicants had not received it. After an adjournment Mr Najafian was able to provide a screenshot in relation to the document, which appeared to demonstrate that it had been created, last modified and printed in the afternoon of 20 August 2020.The screenshot was received by the Tribunal during the case management discussion and intimated to Miss Duff for the Applicants at the same time.

8. Miss Duff for the Applicants intimated that she accepted that the Respondents had provided the information required in terms of Regulation 3 given the information provided by Mr Najafian after the adjournment.

9. Parties were agreed that the extent of the breach of the Regulations amounted to the late lodging of the deposit in an approved scheme by some 9 days and the late provision of the required information in terms of Regulation 3 by a similar number of days.

10.The Applicant was invited to make representations to the Tribunal as to the amount of any sanction to be imposed but essentially indicated that this was a matter for the tribunal which had heard all of the information. On behalf of the Respondent

Mr Najafian confirmed the information he had first submitted to the Tribunal in a letter received on 14 October 2020. He indicated that the Respondents were a small business which had up to 5 members of staff and usually 3 members of staff dealt with private tenancies. He was one of those 3 members of staff but he operated in more of an oversight role. During the course of the Covid 19 restriction periods in 2020 all staff members had been furloughed at various times. At the time that the Applicants had paid their deposit and for some time after that, one staff member was dealing with all of these matters. The business was not operating in the normal way, letting properties at that time, but the property leased to the Applicants had been marketed, viewed, and leased by local agents acting on their behalf in Stirling. He indicated that the firm were trying to manage as best they could at the time that the deposit was paid, but since one staff member was doing the work which was normally done by 3, this was why the deposit had been paid into an approved deposit scheme some days late and the required information had also been transmitted late. He referred to the length of time that the business had been in operation, the fact that the partnership was a registered landlord and indicated that over the years in which they had been involved in the private rental sector this was the first time they had required to appear at a Tribunal. He also advised that the rental income received by the business was 75% down due to the Covid 19 situation and they were doing all they could to assist tenants in accessing schemes to assist them with payment of rent.

11. The tribunal considered the terms of the Regulations and was satisfied it had sufficient information to determine the matter at this stage and that the procedure was fair.

12. The Tribunal found that the Respondent had breached the terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations in that the tenancy deposit was paid into an approved scheme some nine days late and the information required to be given to tenants was provided late, to the same extent.

Findings in Fact

The Tribunal found the following facts are established:

13. The parties entered into a tenancy agreement at the property commencing on 1 July 2020 and this agreement is ongoing.

14. This tenancy is a relevant tenancy within the meaning of Regulation 3 of the 2011 Regulations.

15. The Applicants paid a total deposit of £600 (£300 each) to the Respondent before they moved into the property.

16. The deposit was paid by bank transfer into the Respondent's bank account.

17. The total deposit of £600 received from the Applicants was paid into an approved deposit scheme by the Respondent on 20 August 2020, some 9 days after it should have been protected.

18. The information required to be provided to the Applicants in respect of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 was provided in a letter dated 20 August 2020 which was also some 9 days after the time that the information should have been provided in terms of Regulation 3.

19. At the time when the deposit was paid by electronic bank transfer into the Respondent's bank account and for some time thereafter, the Respondent's business was operating at a reduced capacity due to a number of staff being furloughed due to the Covid 9 restrictions. One member of staff was doing work normally carried out by 3 persons and this was the reason why the deposit was paid late into a scheme by a number of days and also why the required information was provided late.

20. The Respondent indicated their acceptance that the deposit had been paid late into an approved scheme by letter received by the Tribunal on 14 October 2020, before the case management discussion. In the letter of 20 August 2020 to the Applicants, giving information, they also intimated that the deposit had been paid late into the scheme and apologised for this lateness.

Reasons for Decision

21. The Tribunal having found that there was a breach of the Regulations, it then fell to the Tribunal to consider what sanction should be made in respect of the failure to protect the deposit and give the information required in terms of Regulation 3 of the 2011 Regulations within the required timeframe. The Tribunal had regard to the case of ***Russell - Smith and others v Uchegbu [2016] SC EDIN 64***. In particular the Tribunal considered what was a fair proportionate and just sanction in the circumstances of the case always having regard to the purpose of the Regulations and the gravity of the breach. Each case will depend on its own facts and in the end of the day the exercise by the tribute tribunal of its judicial discretion is a balancing exercise.

22. The Tribunal weighed all of the factors and found it to be of significance that the deposit had been unprotected for a period of some 9 days after the 30 working day limit for paying the deposit into a scheme. The Tribunal also noted that the provision of the letter giving information required in terms of Regulation 3 was late by a similar number of days. The Tribunal also considered the fact that the Respondents had admitted the breach in terms of the failure to pay the deposit timeously into an Approved Deposit Scheme before the first case management discussion and had admitted this in the letter to the Applicants giving information dated 20 August 2020. The Tribunal accepted the explanation for the lateness given by Mr Najafian. The Covid 19 restrictions on the way businesses operated during 2020 had clearly had an effect on the ability of the Respondent's business to function, in the absence of staff members on furlough. It was clear that this had not been a deliberate failure on the part of the Respondent but had arisen due to a combination of circumstances some of which (at least in relation to Covid 19) were out with the control of the Respondent.

23. The Tribunal found the breach to be the lower end of the scale and having regard to what it considered to be a number of mitigating factors determined that the sanction should be £300 in the particular facts and circumstances of the case.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay to the Applicants the sum of three hundred pounds in total having found that the Respondent has breached the duties set out in Regulation 3 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.

Legal Member/Chair

9.12.20

Date