



**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/21/2416

**Re: Property at 1/2 12 Ritchie Street, Millport, North Ayrshire, KA28 0AL ("the
Property")**

Parties:

**Mr Jason Neil, 1/2 12 Ritchie Street, Millport, North Ayrshire, KA28 0AL ("the
Applicant")**

**Douglas Murray, CCMS (1984) Ltd, Crossford Mill, Beith Road, Johnstone,
Renfrewshire, PA10 2NS ("the Respondent")**

Tribunal Members:

Gillian Buchanan (Legal Member)

Decision (in absence of the Applicant)

At the Case Management Discussion ("CMD") on 24 November 2021 which took place by telephone conference the Respondent was in attendance. The Applicant was neither present nor represented.

The Tribunal considered whether, notwithstanding the absence of the Applicant, it could proceed with the application in terms of Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules").

The Tribunal was satisfied that the Applicant had received notice of the hearing by letter from the Tribunal dated 20 October 2021, which letter was intimated to the Applicant on the same date by email to his usual email address. The Tribunal was therefore satisfied that Rule 24(1) of the Rules had been complied with.

The Tribunal also took into account the representations of the Respondent who emphasised that it was entirely accepted that the tenancy deposit paid by the Applicant had not been timeously lodged into an approved scheme, who was happy for the Tribunal to deal with the application in the absence of the Applicant and who made reference to forthcoming medical appointments that he required to attend such that he would prefer this matter to be resolved at the CMD.

Having regard to the circumstances and the Respondent's representations, the Tribunal determined that it would proceed with the application in the absence of the Applicant.

Prior to the CMD the Tribunal had also received from the Respondent written representations comprising a letter dated 9 November 2021 and a letter from Jonathan Lee of Be-Rented Limited, 2a North Kirklands, Eaglesham Road, Glasgow, G76 0NT ("the Letting Agent") dated 2 November 2021.

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

The following issues were not in dispute:-

- The Respondent is the heritable proprietor of the Property.
- The Respondent leased the Property to the Applicant in terms of a Private Residential Tenancy Agreement dated 22 February 2021 ("the PRT").
- The PRT commenced on 22 February 2021.
- The Applicant lodged with the Respondent per the Letting Agent a deposit of £260. This payment was made on 6 February 2021.
- The Letting Agent did not timeously pay the deposit into an approved scheme within 30 working days of the date of commencement of the PRT as required in terms of Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations").
- The deposit details were registered by the Letting Agent with Letting Protection Scotland on 24 June 2021 and the deposit was allocated and therefore protected from 13 September 2021.
- Whilst fault for the failure to lodge the deposit timeously into an approved scheme lay with the Letting Agent, the application is correctly made by the Applicant against the Respondent who requires to comply with the Regulations.

The Case Management Discussion

Submissions for the Respondent

The Tribunal noted the representations made by the Respondent in his letter of 9 November 2021 and the terms of the Letting Agent's letter of 2 November 2021 which the Respondent supplemented as follows stating:-

- That the situation that had arisen relative to the deposit was an administrative error on the part of the Letting Agent and for which he accepted ultimate responsibility.
- That the Applicant had vacated the Property during the first week in November 2021 and had returned the keys between 9 and 11 November 2021.
- That on vacating the Property the Applicant had removed everything from the flat including the wallpaper and the Police were involved.
- That there are rent arrears due by the Applicant and damages too.
- That the Respondent had blocked the Applicant after vulgarity and abuse directed to the Respondent by the Applicant after the Respondent had dealt with a repair issue.
- That whilst the Respondent was aware the Letting Agent's office was closed for a period of time due to COVID19 that did not excuse the Letting Agent's failure to deal with the deposit properly.

- That the Respondent owns and rents out 4 properties (including the Property) all of which are managed on his behalf by letting agents.
- At no time has he ever told the Letting Agent or any of his letting agents not to comply with legal requirements.

Reasons for decision

- The Tribunal takes a landlord's failure to comply with the Regulations very seriously.
- In terms of the regulation 10 of the Regulations it is stated:-

"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;"

- Having admitted a breach of the Regulations the Tribunal is obliged to make an order against the Respondent.
- Whilst the Tribunal noted that fault for not lodging the deposit timeously in an approved scheme lay with the Letting Agent, the Letting Agent acted as the Respondent's agent and therefore ultimate responsibility lay with him which he properly accepted.
- In determining the amount payable by the Respondent to the Applicant the Tribunal took into account the following:-
 - That the failure to pay the deposit into an approved scheme timeously was caused by the Letting Agent.
 - That the failure to pay the deposit into an approved scheme appeared to be a genuine administrative error.
 - That the Letting Agent took steps to lodge the deposit in an approved scheme when the error came to its attention.
 - That the deposit was protected from 13 September 2021.
 - That the deposit ought to have been protected from 3 April 2021 and was therefore unprotected for around 5 ½ months.
 - That the Applicant has the benefit of the adjudication scheme provided Letting Protection Scotland at the conclusion of the tenancy.

The tribunal therefore determined that, having regard to the foregoing, the Respondent must pay to the Applicant a sum of £520 by way of a penalty for his failure to comply with the Regulations.

Decision

The Respondent is ordered to pay to the applicant sum of £520.

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.

Gillian Buchanan

Legal Member/Chair

24November 2021
Date
