



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulations 3 &10 of the Tenancy
Deposit Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/22/1011

**Re: Property at 22 Weavers Loan, Aberlady, Longniddry, East Lothian, EH32
0FE (“the Property”)**

Parties:

**Mr David Smith, 22 Weavers Loan, Aberlady, Longniddry, East Lothian, EH32
0FE (“the Applicant”)**

**Lowther Homes Limited, Wheatley House, 25 Cochrane Street, Glasgow, G1
1HL (“the Respondent”)**

Tribunal Members:

Susan Christie (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order be granted against the Respondent for
payment of Seven Hundred Pounds (£700) to the Applicant.**

Background

1. The Applicant applied for an Order for an award following on from a failure to lodge a deposit in an approved scheme timeously in line with regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The application was accepted by the tribunal on 20 May 2022.
2. Sheriff Officer’s served the paperwork on the Respondent on 14 June 2022 by leaving a copy in the hands of an employee.
3. The Respondent was invited to give written representations by 4 July 2022. None were submitted.
4. Mr Smith participated in the Case Management Discussion (CMD) on 27 July 2022 at 11.30am. The Respondent did not participate.

5. The tribunal proceeded with the CMD in the absence of the Respondent, the procedure having been fair, and service having been carried out by Sheriff Officer as evidenced by the certificate provided.
6. The detail of the application was discussed with the Applicant along with the paperwork produced. The additional information provided is noted in the Reasons for Decision.
7. The Applicant sought an order.

Findings in Fact

- I. A private residential tenancy between the Parties over the Property commenced on 16 February 2021, which was also the date of entry.
- II. A deposit for the tenancy was taken of £590. This was paid by the Applicant to the Respondent around June/July of 2021.
- III. The Applicant's tenancy deposit was not paid into a tenancy deposit approved scheme until 25 February 2022.
- IV. The tenancy deposit was unprotected until 25 February 2022.
- V. The tenancy is ongoing.
- VI. The Respondent as the landlord did not comply with Regulation 3 of the Regulations and is in breach of the Regulations.
- VII. The Respondent is required to pay the Applicant a sum of money and the Tribunal must make an Order to that effect by virtue of regulation 10.
- VIII. An order is made for the Respondent to pay the Applicant the sum of £700.

Reasons for Decision

8. The extract of the regulations relied upon are noted below. The Regulations came into force on 7 March 2011.
9. The Application detailed the information relied on and was supplemented by additional detail given orally by the applicant at the CMD.
10. A deposit was paid late, around June/July 2022 at the latest the tribunal was advised, and not deposited in an approved scheme until 25 February 2022. The background to the delay in payment of the deposit was spoken to by the Applicant. He let another property from the Respondent before this tenancy began but was the victim of antisocial behaviour and asked for a move after four months. The Respondent offered this Property, and it was accepted by him, and the Applicant moved in almost immediately. He had paid a deposit over for the former let and whilst he asked if it could be transferred over, the Respondent's employee stated that was not possible. He had produced with his application an e mail dated 9 March 2021 from the housing officer providing him with a copy of his new tenancy agreement. It asked him to set up a new direct debit for his rent. He had a credit in his former tenancy rent account and it was to be transferred over. The former tenancy deposit had been authorised to be released to him by the Respondent. He was advised by the Respondent that when the former tenancy deposit came back to him, he was to make arrangements to pay the new deposit. He was unclear as to when the former deposit paid to him.
11. The Applicant stated that he held off setting up his new direct debit for rent and delayed paying the new deposit for the Property as he had made a

complaint regarding him being placed beside an antisocial individual at his former tenancy and his complaint had been ignored. He wished a manager to consider it and he thought holding back the payment would achieve this. When it did not, and he was threatened with court action he gave in and paid the deposit. This was around June/July 2021. He paid the arrears of rent and caught up with all payments. He paid the deposit over.

12. The purpose of Regulation 10 is to impose a *sanction* on the landlord for the failure and non-compliance with the statutory scheme. The deposit was exposed to risk for a period. It appeared to the tribunal that the failure had been initially caused by the speed of the move of the Applicant from one property to another, the new tenancy being created, the delays in recovering the first tenancy deposit and then waiting for the deposit for the new tenancy for the Property to be paid by the Applicant. Based on the account of the Applicant, it then took some months before it was lodged in an approved scheme. The tribunal had regard to the fact that there had been a delay on the part of the Applicant to pay the deposit over, and albeit he provided an explanation for that he nevertheless played his part in the initial delay. The tribunal noted that the Respondent is registered as a landlord in eleven local authority areas (as disclosed in the tenancy agreement) and by inference it has a number of properties to let out. The Respondent therefore will not be unfamiliar with the regulations and the need to timeously lodge the deposit in an approved scheme. The Respondent did not provide written representations or participate in the CMD and therefore the tribunal did not have any information before it as to the Respondent's position.
13. The tribunal makes an order for the Respondent pay to the Applicant £700. The tribunal considered that this is an appropriate amount, exercising its discretion. It is less than the maximum sum allowed. There were limited mitigating factors favourable to the Respondent. The tribunal considered the sum specified to be appropriate given the information before it.

Extract from the Regulations

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.*

[

(1A) Paragraph (1) does not apply—

- (a) where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and*
- (b) the full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord,*
within 30 working days of the beginning of the tenancy.

]1

(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.

[

(2A) Where the landlord and the tenant agree that the tenancy deposit is to be paid in instalments, paragraphs (1) and (2) apply as if—

- (a) the references to deposit were to each instalment of the deposit, and*
- (b) the reference to the beginning of the tenancy were to the date when any instalment of the deposit is received by the landlord.*

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(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 [First-tier Tribunal]¹ 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 [...]2 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 [First-tier Tribunal]¹ —

(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 [First-tier Tribunal]¹ 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.*

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.

S Christie

Legal Member/Chair

27 July 2022

Date

