



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.#**

**Chamber Ref: FTS/HPC/PR/22/1511**

**Re: Property at 8 Mill Inn, Bridgefield Terrace, Stonehaven, AB39 2JF (“the Property”)**

**Parties:**

**Mr Jeremy Westacott, 8 Mill Inn, Bridgefield Terrace, Stonehaven, AB39 2JF (“the applicant”)**

**Mrs Emma Gauld, Briggs of Criggie, Stonehaven, AB39 2XS (“the respondent”)**

**Tribunal Members:**

**David Preston (Legal Member)**

**Decision**

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

- **The respondent had failed in her duty to pay the deposit paid by the applicant to the scheme administrator of an approved scheme under Regulation 3(1)(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”); and**
- **Orders the respondent to pay to the applicant the sum of £347 in terms of Regulation 10(a).**

## **Background:**

1. By application dated 20 May 2022 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 and Regulation 9 of the Regulations the applicant sought an order for payment under Regulation 10.
2. By Notice of Acceptance dated 24 May 2022 a legal member of the First-tier Tribunal with delegated powers so to do, accepted the application for determination by the First-tier Tribunal and appointed the case to a Case Management Discussion (“CMD”).
3. A CMD took place by telephone on 2 August 2022. The parties appeared by telephone and represented themselves.

## **Discussion**

4. The convener explained that the purpose of the CMD was to identify any issues which might be in dispute, and which might require an evidential hearing to take place. He noted that the respondent’s representations of 7 July 2022 acknowledged and accepted that she had failed to pay the deposit into an approved scheme within the required time. Accordingly, there was nothing by way of fact to be determined and it fell to the tribunal to assess an appropriate level of sanction which it is required to impose under the regulations. The tribunal invited the parties to address it on what they considered an appropriate sanction would be in the circumstances.
5. The applicant suggested that a figure in the order of 1 or 1½ times the deposit would be appropriate. He said that he had been very clear about the requirements imposed on a landlord and although the situation appeared to have arisen as a result of mistake, he considered that the sanction should be significant. He suggested that if it had not been for his application to the tribunal the deposit might have remained unprotected and that it was not for him as a tenant to remind his landlord of her obligations.
6. The respondent acknowledged that a sanction was a requirement of the regulations but underlined her position as outlined in her representations that this had been a genuine error as a result of having acquired the property at auction shortly before the commencement of the tenancy and having attended to the requirements of becoming a new landlord and she had simply overlooked the payment of the deposit into a recognised scheme. She said that she would be willing to pay ½ the amount of the deposit by way of sanction.

## Reasons for Decision

7. Rule 17(1)(d) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the tribunal "*may do anything at a case management discussion which it may do at a hearing, including making a decision*". The tribunal was satisfied that it had before it all the information it required to make a decision and that it would, therefore do so without a hearing.
8. Regulation 10 of the 2011 Regulations provides that if the tribunal finds that the landlord did not comply with any duty in Regulation 3, the tribunal *must* order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit. That allows the tribunal to impose an appropriate sanction from a nominal figure up to the stated maximum.
9. The tribunal is required to exercise discretion in deciding what level of order is appropriate, subject to the maximum of three times the amount of the deposit. The tribunal noted that in an Upper Tribunal decision (reference 2019 UK 39 UTS/AP/19/0023) that Sheriff David Bickett sitting on the Upper Tribunal had indicated that it was appropriate for the tribunal to differentiate between a landlord who has numerous properties and runs a business of letting properties as such, and a landlord who has one property which they own and let out. The Sheriff indicated in the decision that it would be "inappropriate" to impose similar penalties on two such landlords. In this case the respondent was a landlord who had become a registered landlord matter of days before commencement of the tenancy and had overlooked her obligations under the Regulations.
10. Prior to the jurisdiction to determine these applications becoming part of the jurisdiction of the First-tier Tribunal, the applications were determined in the Sheriff Court. There are numerous Sheriff Court decisions which have been reported. In many of these cases, the Sheriff Courts indicated that the Regulations were introduced to address what was a perceived mischief and that they will be meaningless if not enforced.
11. The tribunal considered that this was not a significant breach of the regulations and, as such it required to attract a penalty towards the lower end of the available range, whilst at the same time demonstrating that the tribunal regards the obligations under the Regulations as serious and not to be overlooked lightly.
12. The circumstances in this case appeared to tribunal to demonstrate a genuine oversight on the part of the respondent which she rectified at the earliest opportunity on being made aware of her failure. There had neither been an intentional withholding of the deposit from a scheme nor a wilful disregard for the regulations.

13. In reaching its decision the tribunal had regard to the representations from both parties and took into account the circumstances surrounding the respondent's failure. The tenancy commenced on 8 April 22 which would have required the deposit to be lodged no later than 20 May 2022. The tribunal noted that the application was submitted to the tribunal on that date. The tribunal also noted the respondent's representations to the effect that the deposit had been paid into an approved scheme immediately she became aware which was when the sheriff officers had served the application on her on 17 June 2022.

14. Having taken these factors into account the tribunal determines that a sanction of £347 being equivalent to ½ the level of the deposit is appropriate.

### **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.**

# David Preston

2 August 2022