

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

Chamber Ref: FTS/HPC/PR/22/2621

**Re: Property at Netherinch Farmhouse, Milton of Campsie, Glasgow, G66 8AW
("the Property")**

Parties:

**Mrs Dawn French, Mr Adrian French, 1A Mailings Road, Banton, Kilsyth, G65
0QP ("the Applicants")**

**Dow Kelvinhead Ltd, Kelvinhead Farm, Kelvinhead, Kilsyth, Glasgow, G65 0QH
("the Respondent")**

Tribunal Members:

Jim Bauld (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that the Respondent should be ordered to make payment
to the Applicants of the sum of TWO THOUSAND POUNDS (£2,000)**

Background

1. By application dated 28 July 2022 and amended on 5 October 2022 the applicants sought an order in terms of Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations") in respect of an alleged failure by the respondent to comply with those regulations.
2. The application was accepted by the Tribunal and referred for determination by the tribunal.

3. A Case Management Discussion (CMD) took place on 3 February 2023. The tribunal issued a note after the CMD and reference is made to that note. It was decided that a full hearing would be held on a later date .
4. The conclusion at the CMD was that the Tribunal would be required to make an order for payment in terms of the 2011 Regulations . The only matter to be determined by the Tribunal was the amount of the payment .

The Hearing

5. The hearing took place on 10 May 2023. The applicants attended personally. The respondent was represented by William Dow, their managing director .
6. The tribunal explained the purpose of the hearing and the powers available to the tribunal to determine matters.

Agreed matters of fact

7. Certain matters were agreed between the parties.
8. The applicants and respondent had entered into a tenancy agreement relating to the property
9. The tenancy had commenced on 1 July 2021 and had ended on 31 July 2022
10. The rent was £1400 per month.
11. A deposit of £1400 had been paid by the applicants to the respondents
12. The deposit was never lodged in any approved tenancy deposit scheme
13. The deposit was repaid in full to the applicants at the conclusion of the tenancy

Summary of discussions

14. During the hearing, the parties were asked various questions by the tribunal members.
15. The applicants were asked by the tribunal to summarise the way in which they had been inconvenienced by the respondent's failure to launch the deposit. In response they indicated that they became aware that the deposit had not been lodged in or around April 2022 and had raised this issue with the respondent.
16. They became concerned that there might be difficulties at the end of the tenancy in having the deposit returned to them in the absence of the ability to

utilise the appropriate dispute resolution scheme with the tenancy deposit scheme.

17. During the period when they occupied this property, Mrs French indicated that she was suffering from certain health issues and the worry regarding the deposit had caused additional stress. They accepted that the deposit was returned to them in full on the day of the end of tenancy inspection.
18. The respondent was asked why the deposit had not been lodged at the outset. It was accepted by Mr Dow, as the managing director of the company that the tenancy agreement had been signed and completed by his partner, Carol Johnston. At the time he was suffering from certain health issues and they simply forgot to lodge the deposit.
19. He indicated that the company on some occasions used a managing agent to deal with the leases of the properties which they own and on other occasions he and Mrs Johnson dealt with them.
20. In written submissions which had been lodged in advance of the hearing, the respondents had exhibited to the tribunal a number of other certificates from an approved Tenancy Deposit scheme in relation to other properties which they own showing deposits which have been lodged. Mr Dow invited the tribunal to accept that the failure in this instance was a simple human error.
21. At the conclusion of the hearing all parties indicated that they were content for the tribunal to consider all the evidence that had been presented to the tribunal both orally and in order to make the decision in accordance with the relevant regulations. The tribunal is grateful to the parties for their attendance at the hearing and their assistance in answering questions.

Discussion and decision

22. This application related to the failure of the Respondent to place a tenancy deposit within an approved tenancy deposit scheme. Landlords have been required since the introduction of the 2011 Regulations to pay tenancy deposits into an approved scheme within 30 working days of the commencement of the tenancy. In this case it was accepted by the Landlord that they had failed to do so. Accordingly they were in breach of the duties contained in Regulation 3 of the 2011 Regulations. Those duties are twofold. There is a requirement to pay the deposit to a scheme administrator and the requirement to provide a Tenant with specified information regarding the tenancy deposit. The Respondent failed in both duties.
23. Regulation 9 of the 2011 Regulations indicates that if a Landlord does not comply with any duty in regulation 3 then the Tribunal must order that a Landlord makes payment to the Tenant of an amount "not exceeding three times the amount of the tenancy deposit".

24. Accordingly in this case the Tribunal is required to make an order for payment. The only matter to be determined by the Tribunal is the amount of the payment.
25. In this case the Tribunal carefully considered the evidence which had been produced by both parties. There was clear evidence, agreed and acknowledged by the respondent, that the respondent had failed to pay the tenancy deposit into the appropriate scheme for the whole period of the tenancy (a period of approximately thirteen months). The deposit was never lodged in accordance with the requirements of the 2011 Regulations.
26. The Regulations were introduced to safeguard deposits paid by Tenants. They were introduced against a background of Landlords abusing their position as the holder of deposit moneys. The parliament decided that it should be compulsory to put the deposit outwith the reach of both the Landlord and the Tenant to ensure that there was a dispute resolution process accessible to both Landlord and Tenant at the end of a tenancy and which placed them on an equal footing. The Regulations make it clear that the orders to be made by Tribunals for failure to comply with the Regulations are a sanction or a penalty.
27. In this case, the Respondent was in clear breach of the 2011 Regulations.
28. The tribunal notes that in a recent Upper Tribunal decision, (**Ahmed v Russel** UTS/AP/22/0021 2023UT07) Sheriff Cruickshank indicates (at Para 38) that “**previous cases have referenced various mitigating or aggravating factors which may be considered relevant. It would be impossible to ascribe an exhaustive list. Cases are fact specific and must be determined on such relevant factors as may be present**”. The amount awarded should represent “**a fair and proportionate sanction when all relevant factors have been appropriately balanced**”.
29. The sanction to be imposed is intended to mark the gravity of the breach which has occurred. It should reflect the level of overall culpability in each case measured against the nature and extent of the breach of the 2011 Regulations. The tribunal is required to determine a fair and proportionate sanction based on the facts as recorded.
30. The tribunal was not persuaded that the award should be made at the maximum level available to the tribunal which based on the deposit being £1,400 would have been £4,200.
31. In this case, the deposit was unprotected for the entire period of the lease. The tribunal does accept that this appears to have been an isolated incident and notes that the respondent has expressed remorse and has apologised for the failure. Ultimately, the entire deposit was returned to the tenant. The tribunal takes the view that this was not the most egregious breach of the 2011 Regulations. The tribunal accepts that the failure to lodge the deposit was caused by a simple administrative error.

32. However, all landlords should be aware that deposits should be lodged and that they should have systems in place to try to avoid such administrative errors. The failure to lodge the deposit in this case was a serious error and was compounded by the failure to lodge it when the error was drawn to the respondent's attention.
33. In the circumstances, the tribunal determines that the appropriate amount of the award to be made should be £2,000 which reflects the seriousness of the breach but acknowledges the mitigatory factors put forward by the respondent.

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.

J Bauld

10/05/2023

Legal Member/Chair

Date