



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

Chamber Ref: FTS/HPC/PR/21/2352

**Re: Property at Flat 79, 74-85 Walker Gardens, Aberdeen, AB11 8AD (“the
Property”)**

Parties:

**Miss Rebecca Kempself, 80 Cairnwell Drive, Aberdeen, AB16 5PB (“the
Applicant”)**

**Sanctuary Homes (Scotland) Limited, Sanctuary House, 7 Freeland Drive,
Glasgow, G53 6PG (“the Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to make an order for payment against the Respondent in
the sum of Three hundred and fifty pounds (£350) Sterling**

Background

- 1 The Applicant applied to the Tribunal seeking an order for payment as a result of the Respondent's failure to lodge their deposit in an approved tenancy deposit scheme.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 18th November 2021.

- 3 The Respondent subsequently submitted a response to the application via email, which was crossed over to the Applicant. In summary, the Respondent explained that the failure to lodge the deposit had been due to an administrative oversight, at a time when the procedures for lodging deposits had changed. It had subsequently been received by the deposit scheme on 2 March 2021. There had been an error in the Respondent's email address which meant that she did not receive the prescribed information regarding her deposit. The Respondent had subsequently implemented changes to procedures to ensure there was appropriate communication between the various teams to ensure such an oversight did not happen again.

The Case Management Discussion

- 4 The Case Management Discussion took place on 18 November 2021. The Ms Kempsell was present. The Respondent was primarily represented by Ms Susan Alexander, who was joined by her colleague Mrs Tamara Forgie-Watt.
- 5 The Legal Member explained the purpose of the Case Management Discussion and the legal test to be applied. She asked the parties to address her on their respective positions. Their submissions are summarised below. For the avoidance of the doubt, this is not a verbatim account of what was discussed at the Case Management Discussion but a summary of those matters relevant to the Tribunal's determination of the matter.
- 6 Ms Kempsell confirmed that she was seeking an order in the sum of £900 as sanction for the Respondent's failure to lodge her tenancy deposit with a scheme within the statutory timescales and provide the required information. She had only become aware of this at a later date when her tenancy came to an end and she received information regarding the deposit for her new tenancy. That had caused her concern and stress as she was unaware of the position regarding her previous deposit which had been paid to the Respondent. She had contacted SafeDeposits Scotland and the Respondent and had subsequently discovered that her deposit had been lodged late. She confirmed that the deposit had been lodged on the 2 March 2021. Ms Kempsell advised that she had calculated the sum of £900 based on the number of days outwith the statutory deadline and the amount of deposit paid.
- 7 The Legal Member asked if Ms Kempsell disagreed with anything in the written representations submitted by the Respondent. She advised that she disagreed with the statement about the error in her email address. She had been in email correspondence with the Respondent so they would have had her correct address. Also, the Respondent would have received a response confirming the email had failed. Ms Kempsell confirmed that she had ultimately received her deposit back, after having applied to SafeDeposits Scotland for its release.

- 8 Ms Alexander spoke on behalf of the Respondent. She confirmed that it was not disputed that the Respondent had breached the regulations by lodging the deposit late. There had been a combination of issues, largely due to the timing and the fact that different departments were dealing with deposits. Procedures had now been improved to make sure all relevant information is logged. Ms Alexander confirmed that Ms Kempsell would have been in email correspondence with members of staff in the housing team, however when the deposit was logged the finance team took the email address logged on the system which was incorrect. There had been no deliberate attempt to keep the deposit, it was simply due to a manual error in the system.
- 9 Ms Alexander explained that at the time the deposit was received from Ms Kempsell there had been a change in the process for submitting deposits to SafeDeposits Scotland. Previously this had been done in bulk, and the scheme would register the various tenancies. However the process had changed in December 2020 whereby deposits had to be logged and tenancies registered individually by the Respondent. Ms Forgie-Watt explained that the Respondent was asking the Tribunal to take into account the mitigating circumstances, albeit she was aware that an award would be made to Ms Kempsell. The Legal Member confirmed that the 2011 Regulations allowed no discretion in that regard.
- 10 The Case Management Discussion concluded and the Legal Member confirmed that the decision would be issued in writing.

Relevant Law

- 11 The relevant law is contained within the Housing (Scotland) Act 2006 and the Tenancy Deposit Scheme (Scotland) Regulations 2011. Section 120 of the 2006 Act provides as follows:-
- “120 Tenancy deposits: preliminary*
- (1) A tenancy deposit is a sum of money held as security for—*
- (a) the performance of any of the occupant's obligations arising under or in connection with a tenancy or an occupancy arrangement, or*
- (b) the discharge of any of the occupant's liabilities which so arise.*
- (2) A tenancy deposit scheme is a scheme for safeguarding tenancy deposits paid in connection with the occupation of any living accommodation.*
- 12 The 2011 Regulations provide as follows:-
- “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.*

(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.

(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 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 by summary application and must be made 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 sheriff—

(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 sheriff 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.”

Reasons for Decision

- 13 The Tribunal determined the application having regard to the application paperwork, the written representations from the parties and the verbal submissions at the Case Management Discussion. The Tribunal was satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. It was noted that the substantive facts of the matter were agreed.
- 14 The 2011 Regulations specify clear duties which are incumbent on landlords in relation to tenancy deposits. Regulation 3 requires a landlord to pay any deposit received in relation to a relevant tenancy to an approved tenancy deposit scheme within thirty working days of the beginning of the tenancy. The

deposit must then be held by the scheme until it can be repaid in accordance with the requirements of the Regulations following the end of the tenancy.

- 15 It was a matter of agreement between the parties that the tenancy had commenced on 23 December 2020, that the Applicant had paid a deposit of £700 to the Respondent on 24 December 2020, and that the Respondent had not paid the deposit into an approved tenancy deposit scheme until 2 March 2021. The deposit should in fact have been lodged no later than 9 February 2021, being 30 working days from the date of commencement of the tenancy. The Respondent had also failed to provide the prescribed information to the Applicant regarding the scheme in which her deposit had been placed. The Respondent was therefore in breach of Regulation 3, which was accepted in the written representations submitted and the verbal submissions by Ms Alexander at the Case Management Discussion.
- 16 Regulation 9 provides that any tenant may apply to the Tribunal for an order where the landlord has not complied with the duty under regulation 3. Further, under Regulation 10 in the event of a failure to comply, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. Accordingly having been satisfied that the Respondent had failed to comply, the Tribunal then had to consider what sanction to impose having regard to the particular facts and circumstances of the case. Whilst the Applicant had suggested a figure in this regard, ultimately the decision as to the level of sanction was at the discretion of the Tribunal.
- 17 The Tribunal considered the requirement to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach. Ultimately this was not a situation where the Tribunal considered an award at the higher end of the scale was merited. The Tribunal accepted the Respondent's explanation for not lodging the deposit, and not providing the relevant information, timeously. It was unfortunate that there had been a series of errors in relation to the Applicant's tenancy but the Tribunal did not consider there to be any deliberate attempt on the Respondent's part to evade the duties imposed by the Regulations. There were clearly breakdowns in communication between the various teams within the Respondent's organisation at the time however the Tribunal was assured that the Respondent had taken steps to address these issues and prevent such a breach from occurring again in future, through improvements to processes and procedures.
- 18 The Tribunal further noted that the deposit had been paid over to the scheme approximately three weeks after the statutory deadline. The Applicant had therefore benefited from the security of the deposit scheme when her tenancy ended. The Tribunal did accept that she would have suffered a level of stress at that time as a result of the uncertainty regarding her deposit. However this would have been allayed fairly quickly through her receiving confirmation from

both the Respondent and SafeDeposits Scotland that her deposit was secure and she had subsequently been repaid the sum in full.

- 19 The Tribunal did however note the purpose of Regulation 10, namely to penalise landlords to ensure they comply with the duty to protect and safeguard tenancy deposits. The provisions of Regulation 10 leave no discretion where a landlord is found to have failed to comply and permit an award of up to three times the deposit where a finding of breach is made. Balancing the competing factors in the particular facts and circumstances of this case, the Tribunal considered that a sanction in the sum of £350 would be appropriate, being half the deposit.

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.

Ruth O'Hare

Legal Member/Chair

18th November 2021

Date