



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

Chamber Ref: FTS/HPC/PR/22/3311

Re: Property at 3R 10 Peddie Street, Dundee, DD1 5LS (“the Property”)

Parties:

**Dr Su Ern Lee, 28 Digby Mansions, Hammersmith Bridge Road, Hammersmith,
London, W6 9DE (“the Applicant”)**

**Sean Lewis Property, per SGL Property Ltd, India Buildings, 86 Bell Street,
Dundee, DD1 1HN (“the Respondent”)**

Tribunal Members:

Alison Kelly (Legal Member)

Decision (in absence of the both parties)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment of three times the amount of
the deposit should be made.**

Background

The Applicant lodged an application on 7th September 2022 under Rule 103 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) seeking a sum under the Tenancy Deposit (Scotland) Regulations 2011.

Lodged with the application were :

1. Tenancy Agreement with a commencement date of 13th September 2019 and a deposit of £425
2. Email chain re deposit return
3. Evidence of termination date of tenancy

The papers were served on the Respondent by Sheriff Officers on 28th November 2022.

Case Management Discussion

The Case Management Discussion (“CMD”) took place by teleconference. No one dialled in. The Clerk telephoned the Applicant, who confirmed that she had not received notification from the Tribunal of the date of the CMD. She was at work and could not join the call.

The Chairperson decided to adjourn the CMD to a fresh date.

The papers for the continued CMD were served on the Respondent by Sheriff Officer on 24th February 2023.

Continued Case Management Discussion

The Continued CMD took place by teleconference on 27th March 2023. The Applicant was not able to join the call due to work commitments, she is a doctor in the NHS. No representative of the Respondent joined the call.

The Chairperson was satisfied in terms of Rule 17(2) sufficient notice had been given to the parties of the date, time and manner of the CMD. She was also satisfied that she could proceed to make a decision based on the information before her.

Findings In Fact

1. The Applicant entered in to a tenancy agreement for the property on 13th September 2019;
2. The Applicant paid a deposit of £425;
3. There is no evidence to suggest that the Respondent paid the deposit in to an approved scheme;
4. The Applicant vacated the property on 23rd June 2022;

Reasons For Decision

The Application has been brought under the Tenancy Deposit (Scotland) Regulations 2011, based on an alleged failure of the Respondents of their duties under Regulation 3, and seeking a payment in terms of Regulation 10.

Regulation 3 is 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.

Regulation 10 is as follows:

10. 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; and

(b) may, as the First-tier Tribunal 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.

The Applicant’s application clearly stated that she had paid a deposit of £425 and it was not lodged in an approved scheme. She provided copy email correspondence with the letting agent, Belvoir!, which showed they accepted the termination date of

23rd June 2022, and also stating that the deposit would be returned with no deduction. They therefore appear to accept that a deposit was paid.

The papers were served on the Respondents by Sheriff Officer on 28th November 2022. They did not make any written representations, nor did they attend either CMD.

Rule 10 gives the Tribunal power to impose a sanction of up to three times the amount of the deposit. The amount is at the discretion of the Tribunal. The Tribunal must consider the seriousness and the nature of the breach.

In this case there is no evidence that the deposit was lodged at all. The tenancy ran for a period of around two and a half years. The Applicant's money was unprotected for that length of time. Depositing the money in a scheme protects a tenant from several factors, including the landlord becoming bankrupt. The deposit is the tenant's money and remains the tenant's money until an adjudication is carried out by the Tenancy Deposit Scheme and a decision is made as to whether the landlord is allowed to retain any or all of the deposit. It is not for a landlord to make this decision unilaterally, it is not the landlord's money.

The Respondent here is a property company. A search in Companies House reveals that their purpose is "Management of real estate on a fee or contract basis". One of the directors is Sean Gordon Lewis. Mr Lewis is also a director of Dundee Asset Managers Ltd, who are the franchisees for Belvoir! Dundee, as per their website. The directors of the Respondent should therefore know of their obligations under the 2011 Regulations and should take them seriously. The fact that they have not responded to the Tribunal, despite the application being served twice by Sheriff Officers, exacerbates the position.

The Tribunal considered this to be a serious breach at the top end of the scale, given the foregoing.

In all the circumstances the Tribunal decided to award a sum equivalent to three times the amount of the deposit should be awarded.

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.

Alison Kelly

27/03/2023

Legal Member/Chair

Date