



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

Chamber Ref: FTS/HPC/PR/20/1070

**Re: Property at 96 Netherwood Park, Deans, Livingston, EH54 8RW (“the
Property”)**

Parties:

**Miss Claire MacGregor, 96 Netherwood Park, Deans, Livingston, EH54 8RW
 (“the Applicant”)**

**Mr John Boyd, Mrs Paula Boyd, 16 Nikon Road, Harrisdale, WA 6112, Australia
 (“the Respondents”)**

Tribunal Members:

Nairn Young (Legal Member)

Decision

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

- Background

This is an application for an order for payment of a sanction for an alleged failure on the part of the Respondents to carry out their duties under Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (‘the Regulations’), in respect of a deposit paid to them by the Applicant in terms of her assured tenancy at the Property. It called for a case management discussion at 10am on 11 January 2021 by teleconference. The Applicant was on the call in person and was also represented by Mrs Anne Kefferty, a welfare rights officer. The Respondents were on the call in person.

A previous CMD had been adjourned to this date to allow parties the opportunity to discuss settlement of the case. The Respondents had indicated in advance of this calling that that had not been possible.

- Findings in Fact

1. The Applicant lets the Property from the Respondents in terms of an assured tenancy agreement.
2. The initial term of the tenancy was 1 April 2014 to 1 April 2015 and it has continued under tacit relocation since then.
3. In terms of the tenancy agreement, a deposit of £600 was paid to the Respondents by the Applicant on or around 1 April 2014.
4. The Respondents did not pay the deposit into an approved scheme until 9 March 2020.
5. The Respondents were unaware of their duties under reg.3 of the Regulations until these were brought to their attention by the Applicant at some point shortly before 9 March 2020.
6. The Respondents do not let any other properties than this one.
7. At one point during the tenancy, the Respondents also failed to renew their landlord registration and so were unregistered; although, this has now been rectified.

- Reasons for Decision

8. In terms of reg.10 of the Regulations, the Tribunal must make an order for payment of a sum up to three times the deposit, where it finds that a landlord has failed to carry out any of their duties under reg.3. The facts as set out above are not in dispute between the parties and a failure is therefore admitted. Nonetheless, the deposit is now protected in an approved scheme. The only decision that therefore remains for the Tribunal to make is what level of sanction would be fair, just and proportionate.
9. In making that decision, the Tribunal has not taken into account various disputed issues regarding the payment of rent and alleged damage to the Property, which it does not consider to be relevant to this issue. Rather, these are matters that may weigh in the question of whether the deposit should be returned to the Applicant, and are therefore issues to be considered at that point via any dispute resolution process entered into.
10. It is a landlord's responsibility to make him or herself aware of the duties that come with that position. Of the duties set out in reg.3, the most important is that pertaining to the payment of the deposit into an approved scheme, since all the remaining duties follow from it. A failure to carry out that duty is therefore a serious matter.
11. On the other hand, the Tribunal has taken into consideration the fact that this failure appears genuinely to have been as a result of a lack of knowledge on

the part of the Respondents, who are responsible for letting only one property. When they were made aware of their failure, they rectified the situation without delay. As a result of these factors, the impact of their failure was limited, both in respect of the Applicant and of society more widely.

12. It is of concern that the Respondents also admittedly failed to follow the requirements in regard to registration. That failure adds to the impression that they have been careless in making themselves fully aware of their responsibilities as landlords and in carrying those through. Nonetheless, it too has been rectified and it is the Tribunal's impression that the Respondents do now intend to be more conscientious in adhering to the duties incumbent on them.

13. Weighing these points, the Tribunal considered that this breach, while serious and indicative of a general carelessness, is of limited impact and is unlikely to be repeated. A sanction of one and half times the deposit, which is in the middle of the scale, is therefore justified.

- Decision

Order made for payment by the Respondents to the Applicant of the sum of £900 (NINE HUNDRED POUNDS STERLING).

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.



Nairn Young
Legal Member/Chair

11 January 2021
Date