



**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/20/1914**

**Re: Property at 73 Firbank Grove, East Calder, EH53 0FE (“the Property”)**

**Parties:**

**Mr Harry Thomson, 16 Miller Road, Dunfermline, KY12 9DL (“the Applicant”)**

**Mr Barry Miller, 73 Firbank Grove, East Calder, EH53 0FE (“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 in the sum of One hundred and seventy five pounds (£175) Sterling against the Respondent in favour of the Applicant**

**Background**

- 1 By application to the Tribunal the Applicant sought an order for payment as a result of the Respondents failure to lodge his deposit in an approved tenancy deposit scheme and provide the specified information within the statutory timescales.
- 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 24 November 2020.
- 3 A copy of the application paperwork together with notification of the date, time and location of the Case Management Discussion was served on the Respondent by Sheriff Officers. He subsequently submitted written

representations to the Tribunal, confirming that he had not lodged the deposit in a tenancy deposit scheme and setting out mitigating factors including the fact that he was not a professional landlord, was not aware of his duties under the 2011 Regulations and had an agreement with the tenants whereby the deposit was paid towards the last months rent for the property. The Respondent further made reference to repairs required following the Applicant's departure from the property and advised that he would be seeking to make a counterclaim. In support of his position he submitted excerpt text messages between himself and the Applicant, and the other joint tenant, together with email correspondence.

### **The Case Management Discussion**

- 4 The Case Management Discussion took place on 24 November 2020 by tele-conference due to restrictions imposed by the Covid-19 pandemic. The Applicant and the Respondent were both present.
- 5 The Legal Member explained the purpose of the Case Management Discussion. She explained that the Tenancy Deposit Scheme (Scotland) Regulations 2011 were clear in that were the Tribunal to make a finding that there had been a breach it would be obliged to make an order for payment of up to three times the amount of the deposit. She confirmed with the Respondent that he did not dispute there had been a breach of the Regulations. The Legal Member therefore advised that the issue for the Tribunal to determine was the level of sanction to be imposed on the Respondent as a consequence of the breach. She then asked parties to explain their respective positions, with reference to any mitigating factors on the Respondent's part.
- 6 The Applicant explained the reason he had submitted the application was to get his deposit back. He wasn't trying to make any money out of the Respondent. He noted the Respondent's written submissions but did not think that stress was a valid excuse for not complying with his duties under the Regulations. He had broken the law by not lodging the deposit with an approved tenancy deposit scheme. The Applicant explained that the tenancy agreement he signed with the Respondent was out of date, it should have provided for a twenty eight day notice period however the Applicants had to give three months notice. The Respondent had behaved unprofessionally throughout the tenancy. There was no gas safety certificate or energy performance certificate produced at any point. The Applicant made reference to photographs he had submitted which showed the condition of the property. He did not understand why the Respondent was now claiming that costs were due as a result of the condition of the property. The Respondent had not raised this at the time, he had given a reference for the Applicant in which he stated there were no issues with the tenancy. The Applicant confirmed that he

had agreed that the deposit could be paid towards the last months rent but said that he had been forced into this by the Respondent.

- 7 The Respondent advised that he did not consider a high award was justified given the circumstances surrounding the tenancy. He noted the Applicant had referred to being forced into agreeing to pay the deposit towards the last months rent however he referenced the excerpt text messages he had produced which did not imply any coercion on his part. The Applicant had been content to agree and had not indicated otherwise. The Respondent confirmed that he had not sought to insist on recovering the costs of repairing issues, such as the grass in the garden which had been damaged by the Applicant's hot tub, as he was aware the Applicant had split from his fiancé at the time who was the joint tenant. The Respondent referred to the last message he had received from the Applicant in which he had wished him all the best and thanked him. If the Applicant had any issues in relation to the deposit he should have raised it with the Respondent at that point. The Respondent advised that he never wanted to rent the property out. He had bought it for his family to live in, however his wife subsequently became pregnant with twins and the property was too small at the time. The Respondent confirmed that he and his family had since moved back in to the property. He had no intention of letting it again after this experience. He regretted not having done more research at the beginning and he took full responsibility for that.
- 8 The Legal Member then gave both parties the opportunity to make any final statements. The Applicant advised that it was clear from all the evidence that there was miscommunication on the Respondent's part. If the deposit had been lodged in a scheme the Respondent would have been able to apply for any costs he claimed were due. That was the point of the scheme, it would not have caused him this hassle. The Applicant hoped that the Respondent would do his research in future if he were to let the property again.
- 9 The Respondent in his closing statement confirmed that he fully accepted he had failed to comply with his duties in relation to the tenancy deposit. He had been trying to assist the Applicant and his ex-fiance in sorting them out with the tenancy. He pointed out that the Applicant's ex-fiance was content with the situation and had not put in a similar application to the Tribunal. The Respondent reiterated that he was now residing in the property and had no intention on letting the property again. He had learnt his lesson.

## **Relevant Law**

- 10 The relevant law is contained within the Tenancy Deposit Scheme (Scotland) Regulations 2011 which 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.*

*“42.(1) The landlord must provide the tenant with the information in paragraph*

*(2) within the timescales specified in paragraph (3).*

*(2) The information is—*

*(a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;*

*(b) the date on which the tenancy deposit was paid to the scheme administrator;*

*(c) the address of the property to which the tenancy deposit relates;*

*(d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;*

*(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and*

*(f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.*

*(3) The information in paragraph (2) must be provided—*

*(a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or*

*(b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.”*

## **Findings in Fact and Law**

- 11 The Applicant and Respondent entered into a Tenancy Agreement which commenced on 30 August 2019;
- 12 The tenancy between the parties is a “relevant tenancy” as defined by Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”).
- 13 The tenancy was a joint tenancy between the Applicant and Katie Cochrane.
- 14 The said Tenancy Agreement places an obligation on the Applicant and Katie Cochrane to make payment of a tenancy deposit in the sum of £700.
- 15 On or around 7 August 2019 the Applicant made payment of his share of the deposit in the sum of £350.
- 16 The deposit was not lodged with an approved tenancy deposit scheme. The deposit was retained by the Applicant.
- 17 The tenancy between the parties terminated on 30 September 2020. It was mutually agreed between the Applicant, the Respondent and Katie Cochrane that the deposit would be paid towards the last months rent.

- 18 The Respondent is in breach of Regulation 3 of the 2011 Regulations.

### **Reasons for Decision**

- 19 The Tribunal determined the application having regard to the application paperwork 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. The Tribunal was further satisfied that the substantive issues were agreed, therefore there was no requirement for a hearing in the matter.
- 20 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 and provide to a tenant specified information as defined by Regulation 42 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.
- 21 The Tribunal considered it could make a finding at the Case Management Discussion that there had been a breach by the Respondent of Regulation 3. This was a matter of fact agreed between the parties. The Tribunal therefore had to consider the provisions of Regulation 10 which requires that an order for payment be made against the landlord where the Tribunal makes a finding that there has been such a breach. Accordingly the Tribunal had to consider what sanction to impose having regard to the particular facts and circumstances of the case.
- 22 The Tribunal considered the requirement to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach. The Tribunal noted that the deposit had remained unprotected for the entirety of the tenancy, approximately 13 months. The Applicant would not therefore have had the opportunity to access the independent dispute resolution mechanism that would have been available had the deposit been lodged in an approved tenancy deposit scheme. The Tribunal did however accept that there had been agreement between the parties at the end of the tenancy as to the application of the deposit towards the final months rent. The Tribunal did not agree with the Applicant's interpretation of events whereby he claimed to have been forced into this arrangement. The excerpts of text messages between the parties at the time indicated a cordial relationship, therefore the Tribunal found it difficult to accept that the Applicant would have felt coerced in any way.
- 23 The Tribunal accepted that the oversight in the Applicant's failure to lodge the deposit had been a genuine error. He was clearly not a professional landlord,

had not deliberately neglected his duties with any malicious intent and regretted the experience. He was candid in his submissions at the Case Management Discussion on this point. The Tribunal accepted that he had no intention of letting the property again in future, having now moved into it to reside with his family. He had shown genuine remorse at the Case Management Discussion and the Tribunal considered his conduct in the case to be a reflection of inexperience rather than any deliberate attempt to misuse the deposit funds.

- 24 Notwithstanding, 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. The Tribunal did not consider that the circumstances of the case merited an award at the higher end of the scale and balancing the competing factors in the particular facts and circumstances, concluded that a sanction in the sum of £175 would be appropriate, being a sum equivalent to half the deposit paid by the Applicant
- 25 The Tribunal therefore made an order against the Respondents in the sum of £175.

### **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**

**24 November 2020**  
**Date**