



**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/20/1917**

**Re: Property at 4 Regent Square, Lenzie, G66 5AE (“the Property”)**

**Parties:**

**Vicky Young, Mr David Bamford, 4 Regent Square, Lenzie, G66 5AE (“the Applicants”)**

**Simone Guasti, Ms Cristina Ciucci, 7 Moncrieff Avenue, Lenzie, G66 4NL (“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 in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (‘the Regulations’). It called for a case management discussion at 2pm on 8 December 2020 by teleconference. The Applicants were represented by Mr Whyte of Whyte Fraser & Co., Solicitors. The Respondents were represented by Mr Doig of Raeside Chisolm Solicitors Ltd..

- Findings in Fact

1. The Respondents let the Property from the Applicants in terms of a private residential tenancy, with a start date of 27 April 2020.
2. On or around the start date of the tenancy, the Applicants paid the Respondents a deposit of £1,395.

3. The Respondents did not pay the deposit into an approved deposit scheme until September 2020.
  4. They were prompted to do so as a result of a tenant in another property they let raising the requirements of the Regulations with them.
  5. The Respondents have let three properties (including the Property) to various tenants since 2002.
  6. Since the coming into force of the Regulations, they have never paid deposits received into an approved scheme.
  7. The Respondents' have also failed to ensure that they were properly registered as landlords.
  8. Their failure on both counts has been as a result of ignorance of the applicable law.
- Reasons for Decision
9. It was admitted in this case that the Respondents had failed to take the steps required of them under reg.3 of the Regulations. On that basis, the Tribunal must make an order for payment to the Applicants of an amount not exceeding three times the deposit, in terms of reg.10(a).
  10. In assessing what level to fix this sanction at, the Tribunal must determine what is fair, proportionate and just in the circumstances.
  11. In this case, the Respondents were characterised as 'professional landlords' by the Applicant's representative; a characterisation which was denied by the Respondents' representative, on the basis that they are otherwise employed on a full-time basis.
  12. Although the term 'professional landlord' is used in some of the reported cases, it is not one that has a specific definition and it is not ultimately necessary in this case to determine whether it should be applied. The point which is of importance is that the Respondents have admittedly had responsibility for various tenants' deposits, over several properties, since the Regulations have come into force. During all of that time, they have failed to fulfil their responsibilities in terms of having the deposits protected.
  13. That this was due to ignorance is only minimally exculpatory. All landlords have the responsibility to familiarise themselves with the legal duties that are incumbent on them. To the extent that lenience should ever be extended on the basis of 'amateur' status, failure to take this responsibility seriously is less excusable when the landlord is responsible for several properties over an extended period of time.

14. It is of relevance that the Respondents did voluntarily rectify this situation as soon as they became aware of it. That has had the effect of minimising any prejudice to the Applicants and shows a belated change to a more responsible approach, which it is to be hoped will persist.

15. Taking these mitigatory factors into account, an award at the maximum level (as was originally suggested by the Applicants) would not be warranted. Nonetheless, this is a serious breach which betrays a formerly cavalier attitude on the part of the Respondents to any responsibility that might be imposed on them by the law as landlords: an impression reinforced by their failure to ensure they were properly registered.

16. On that basis, it is considered that an order for payment of a sum equivalent to twice the deposit is fair, just and proportionate.

- Decision

Order made for payment of the sum of £2,790 (TWO THOUSAND SEVEN HUNDRED AND NINETY 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**

08/12/2020

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**Legal Member/Chair**

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**Date**