



**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/20/2238

**Re: Property at 79 Jesmond Grange, Bridge of Don, Aberdeen, AB22 8HD (“the
Property”)**

Parties:

**Lewis Anthony Edwards, Mr Austin Ryan Peter Wood, 3 Elmbank Court,
Kineller, Aberdeen, AB21 0SS (“the Applicants”)**

**Mr Pawel Rydzewski, 84 Bramlely Road, Aylesbury, HP18 0XF (“the
Respondent”)**

Tribunal Members:

Valerie Bremner (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Respondent should pay to the Applicants the
sum of one thousand pounds (£1000) having found that the Respondent has
breached the duties set out in Regulation 3 of the Tenancy Deposit Schemes
(Scotland) Regulations 2011.**

Background

1. This is an application under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations and Rule 103 of the Tribunal Rules of Procedure in respect of an alleged failure to comply with the duties required of a landlord under Regulation 3 of the 2011 Regulations.
2. The application was first lodged with the Tribunal on 19 October 2020 and was accepted by the Tribunal on 20 November 2020.

Case management Discussion

3. The Application first called for a case management discussion on 8 January 2021. At that case management discussion both Applicants attended and were represented by the second applicant Mr Wood. The Respondent also attended and was represented by his solicitor Miss Fyffe of Laurie and co solicitors Aberdeen.

4. At the case management discussion on 8 January 2021 the Tribunal had sight of the application, a tenancy agreement, an annexe to the lease, documentation in respect of notices to leave the property, entries from a bank statement, screenshots of text messages, correspondence between the Applicants and the first-tier Tribunal and a deposit scheme certificate. On behalf of the Respondent the Tribunal had sight of a response to the application with supporting paperwork which related to Notices to Leave, executions of service of these Notices and a Minute of lease.

5. In the Respondent's response to the application lodged by his solicitor Miss Fyffe, at paragraph 2 of page 1 of the response, it was accepted that a deposit of £750 was paid by the Applicants in March 2020 to the Respondent in respect of the property, and that this had not been lodged with a tenancy deposit scheme provider until 3 July 2020. In respect of that part of the duty the Respondent accepted that he was in breach of Regulation 3 of the 2011 Regulations.

6. It was agreed between the parties at the case management discussion that the parties had entered into a lease in respect of the property with effect from 4 April 2020. The monthly rent payable was £750, the same amount as the deposit which was paid. After discussion Miss Fyffe the Respondent's solicitor accepted that the tenancy had effectively come to an end on 30 August 2020 when the Applicants vacated the property.

7. There was then a discussion regarding the other part of the duty in terms of Regulation 3 of the 2011 Regulations, that is the landlord's obligation to provide the information required under Regulation 42 to tenants within the same 30 working day period by which time the deposit must also be protected within an approved tenancy deposit scheme. The Respondent's position was that he had sent to the tenants the deposit scheme certificate which was a production lodged with the Application. Perusal of the certificate confirmed that while it contained most of the information required in terms of Regulation 42, it did not set out a statement that the landlord is or has applied to be entered on the local authority register in relation to landlords nor did it set out the circumstances in which all or part of the tenancy deposit could be retained at the end of the tenancy with reference to the terms of the tenancy agreement. On behalf of the Respondent Miss Fyffe accepted that there was a breach of Regulation 3 in so far as the duty to give information in relation to these two points. It was also accepted that the information given in the tenancy deposit scheme certificate was provided late, around the time when the deposit was paid into an approved scheme.

8. The Tribunal was advised that the deposit of £750 was the subject of an adjudication process by the approved tenancy deposit scheme provider and that the adjudication had determined that the landlord should retain the deposit in respect of unpaid rent at the property. At the time of the case management discussion the

Applicants had until a date a few days after the case management discussion to seek a review of that decision or to accept it. Mr Wood on behalf of the Applicants indicated that they would not be challenging the decision of the adjudicator to award the deposit to the landlord in respect of rent arrears accrued at the property.

9. Parties having agreed the extent to which the Regulations had been breached the Tribunal was satisfied that it had sufficient information to determine the matter at the case management discussion. Parties were invited to make representations to the Tribunal as to the amount of any sanction to be imposed on the Respondent.

10. On behalf of the Applicants Mr Wood requested that the Tribunal impose the maximum sanction possible i.e. three times the amount of the deposit of £750. He pointed to the fact that the tenancy agreement initially provided to both he and Mr Edwards had had the names of previous tenants on it. He said that the landlord should have known that he required to lodge the deposit as text messages had been sent to him before the start of the lease asking if the deposit would be held in "Deposit Scotland". Mr Wood pointed to the fact that there had been previous tenants and that the tenancy agreement was not in the proper form. It was clear from his comments to the Tribunal that the tenancy had not been a happy one from the tenants' perspective, and he alleged that homophobic comments had been made and explained how his mental health had suffered during the tenancy. He said that the landlord knew the rules and simply had not complied with them.

11. On behalf of the Respondent Miss Fyffe accepted that the tenancy agreement provided to the Applicants had not been in proper form. She explained that the Respondent had required to deal with matters quickly as he had been leaving Aberdeen to move south having secured employment. He had no time to consult a solicitor to deal with the tenancy and related matters. It was accepted that he had received the text messages. With his change of circumstances Miss Fyffe said that he simply had not had the opportunity to deal with the question of the deposit. It was accepted that he had had previous tenants at the property, which was the only one he rented out. Miss Fyffe's position was that the deposit was paid into an approved scheme no more than two months after it should have been so paid. Most of the required information had been given to the tenants but this was also late. She invited the tribunal to consider that this was a breach of Regulation 3 of the 2011 Regulations which did not require sanction at the maximum level available.

Miss Fyffe also advised the Tribunal that the tenancy had not proceeded smoothly from the Respondent's perspective as he had quite quickly into the tenancy received complaints from neighbours in relation to the tenants. The Respondent himself advised the Tribunal that he had felt pressured to set up the tenancy agreement quickly for the Applicants.

12. The Tribunal considered the terms of the Regulations and was satisfied that it had sufficient information to determine the matter at this stage and that the procedure was fair.

13. The Tribunal found the Respondent had breached the terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 in that the tenancy deposit was paid into an approved scheme some seven weeks after the required timeframe in Regulation 3 of the 2011 Regulations. The Tribunal also found that the terms of Regulation 3(1)(b) had been breached in that the information required to be given to tenants was provided late and did not include two aspects of the required

information in relation to the landlord registration details and the circumstances under which the deposit could be retained at the end of the tenancy.

Findings in Fact

The Tribunal found the following facts are established:

14. The parties entered into a tenancy agreement at the property commencing on 4 April 2020 until 30 August 2020.

15. This tenancy was a relevant tenancy within the meaning of Regulation 3 of the 2011 Regulations.

16. The Applicants paid a deposit of £750 to the Respondent before they moved into the property.

17. The deposit of £750 received from the Applicants was paid into an approved deposit scheme by the Respondent on 3 July 2020, some seven weeks after it should have been protected.

18. Around the time that the deposit was protected in an approved tenancy deposit scheme the Respondent provided the Applicants with a copy of the deposit scheme certificate. This did not include two parts of information required to be given to tenants in terms of Regulations 3 and 42 of the 2011 Regulations.

19. The Respondent by means of a response to the application lodged by his solicitor with the Tribunal in advance of the case management discussion accepted that the deposit had been paid into an approved scheme after the required time frame set out in the Regulations.

20. Around the start of the tenancy between the parties the Respondent was in the process of moving away from Aberdeen to take up new employment.

21. The Respondent received a number of text messages sent on behalf of the Applicants before the start of the tenancy agreement one of which queried where the deposit would be held.

22. The property is the only one rented out by the Respondent and was rented to previous tenants before the Applicants moved in.

Reasons for Decision

23. The Tribunal having found that there was a breach of the Regulations required to consider what sanction should be made in respect of the failure to protect the deposit and to give all of the information required in terms of Regulation 3 of the 2011 Regulations within the required timeframe. The Tribunal had regard to the case of ***Russell – Smith and others v Uchegbu [2016] SC EDIN 64***. In particular the Tribunal considered what was a fair proportionate and just sanction in the circumstances of the case always having regard to the purpose of the Regulations and the gravity of the breach. Each case will depend on its own facts and in the end of the day the exercise by the Tribunal of its judicial discretion is a balancing exercise.

24. The Tribunal weighed all of the factors relevant to the circumstances here and found it to be of significance of the deposit had been unprotected for a period of 7 weeks after the 30 working day limit before the deposit was paid into an approved deposit scheme. The Tribunal also noted that the provision of information required to be given to tenants in terms of Regulation 3 was late by a similar number of weeks and two aspects of the information had not been given to the tenants. The Tribunal also considered the fact that the Respondent had admitted the breach in terms of the failure to pay the deposit timeously into an approved deposit scheme before the case management discussion. As against these factors the Tribunal noted that although this was the only property which the Respondent rented out, he had rented the property to tenants previously and ought to have known the terms of the Regulations. Moreover in terms of exchanges of text messages before the tenancy started the Applicants had sought to clarify with him which scheme would be used to protect the deposit. His answer had been that he would need to “look into” holding the deposit.

25. In all of the circumstances and having regard to the relatively short time in which the deposit had been unprotected but acknowledging that the Respondent knew or ought to have known of his obligations under Regulation 3, the Tribunal considered that this was not a case in which the maximum sanction required to be imposed. Having regard to all of the circumstances the Tribunal decided that the sanction should be in the sum of £1000 given the particular facts and circumstances of this application.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay to the Applicants the sum of one thousand pounds (£1000) having found that the Respondent has breached the duties set out in Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

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.

8.1.21

Legal Member/Chair

Date