



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulation 9 of The Tenancy Deposit
Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/20/2292

Re: Property at 8 Bibby Place, Elgin, IV30 1AN (“the Property”)

Parties:

**Mr John Macmaster, 23 Banff Crescent, Upper Achintore, Fort William, PH33
6TT (“the Applicant”)**

Mrs Diane Tandon, 30 Reidhaven Square, Keith, AB55 5AB (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) being satisfied that the Respondent as landlord of the property at 8 Bibby Place Elgin IV30 1AN15, did not comply with any duty in Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011, makes an order for the Respondent to pay to the Applicant the sum of one hundred pounds (£100).**
- 2. This was a case management discussion ‘CMD’ in connection with an application in terms of Rule 103 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 ‘the rules’ for an order for payment where a landlord has not paid the deposit into an approved scheme. Both parties attended and the CMD proceeded by conference call.**

The tribunal had before it the following copy documents: -

- (1) Application dated 15 October 2020 and received by the tribunal on 30 October 2020.**
- (2) Tenancy agreement.**

- (3) Letter from Safe Deposit Scotland to applicant dated 10 September 2020.
- (4) Letter from the tribunal chamber to the applicant dated 16 November 2020.
- (5) Email to the tribunal chamber from applicant dated 19 November 2020.

Preliminary matters

- 3. The tribunal considered the terms of the letter from the chamber of 16 November and the applicant's reply of 19 November 2020 and sought to clarify a number of matters with the applicant. The tribunal firstly wished to be satisfied in connection with the date the tenancy came to an end and any evidence the applicant had in this connection as required by Rule 103(c). The applicant stated that he did not have any written evidence to lodge as the matter was dealt with by WhatsApp messages with the respondent.
- 4. The applicant clarified that despite the reference to 12 July 2017 at the top of the tenancy agreement, the agreement commenced on 11 September 2019 and it was signed by the parties on that date.
- 5. In relation to the return of the deposit, the applicant stated that the deposit was retained in its entirety by the respondent due to the condition of the property and to cover the cost of some redecoration and replacement of carpets. He initially intended to challenge this but changed his mind and the deposit was returned to the respondent.

The applicant's position.

- 6. The applicant and his former partner rented the property from the respondent in September 2019. A deposit of £750 was paid. The applicant was not given details of the deposit scheme or any of the other details required by regulation 42 of the regulations such as details of the respondent's landlord registration details. The lease does not have the landlord registration number on it. Around April or May 2020 one of the tenants left the property. A new agreement was not drawn up. On 9 September 2020 the applicant contacted the respondent to inquire about the tenancy deposit as he was planning to give up the tenancy. A few days later, the applicant received notification that the deposit had been lodged with SafeDeposits Scotland. There were a number of errors in the notification sent by the respondent to Safedeposits Scotland. At the end of the tenancy the deposit was returned to the respondent due to cover the cost of some redecoration and replacement of carpets. The deposit was unprotected for a year and the applicant was seeking a penalty.

The respondent's position

- 7. The applicant's deposit was not lodged in a deposit scheme due to an oversight. At the time the applicant and his wife entered into the tenancy

agreement the respondent had had a bereavement and the lodging of the deposit slipped her mind. The respondent would have given the applicant details of her landlord registration details in accordance with her usual practice. The applicant contacted the respondent on 1 September 2020 to give notice that he was giving up the tenancy as he could not afford the rent. He asked if the deposit could be used in lieu of the rent for September 2020. The respondent agreed but panicked when she realised she had not lodged the deposit. The respondent lodged the deposit immediately. The respondent accepted that the deposit was unprotected for a year due to her error. She was out of pocket as the applicant did not pay rent for September 2020 but due to the condition of the property the deposit was used for repairs rather than rent. The respondent formerly lived in the property. She manages it herself and is aware of her obligations in terms of the regulations. The respondent also has a company which rents out the other properties, but she uses a management company to deal with the deposits for those properties.

8. Findings in fact

- (1) The parties entered into a tenancy agreement on 11 September 2019 for let of the property.
- (2) The applicant paid a deposit of £750.
- (3) The deposit was not paid into a recognised deposit scheme by the respondent until 13 September 2020.
- (4) The respondent did not provide details of the scheme within 30 working days of the start of the tenancy, or a statement that he is or has applied to be entered in the register of landlords maintained by the local authority.
- (5) Around September 2020 the respondent became aware that the applicant's deposit had not been lodged in an appropriate scheme.
- (6) The respondent took steps to lodge the deposit in a scheme around 13 September 2020.
- (7) The tenancy came to an end around 30 September 2020.

Reasons

9. Regulation 3 provides:-

A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 days of the beginning of the tenancy, pay the deposit to the scheme

administrator of an approved scheme. And provide the tenant with the information required under regulation 42.

10. The respondent accepted that there had been a breach of the regulations as she had failed to lodge the applicant's deposit in a recognised scheme for one year. Being satisfied that a breach had occurred, the tribunal went on to consider the gravity of the breach. The tribunal accepted that the failure to lodge the deposit was an oversight due to a bereavement. It was the respondent's position that as soon as she realised her error she took steps to rectify it. applicant. The respondent was familiar with the scheme and has used it for other tenants. None of this was not challenged by the applicant. Further, there was no real prejudice to the applicant as the deposit scheme were involved in the return of the deposit and it has been retained by the respondent due to the condition of the property. The tribunal reviewed all of the recent cases regarding tenancy deposit schemes and noted that in the case of *Kirk-v-Singh* sheriff Jamieson states that the tribunal should proceed to :

proceed to impose a sanction which is "fair, proportionate and just having regard to the seriousness of the noncompliance.

11. Accordingly, the tribunal decided a penalty of £100 was fair proportionate and just in all of the circumstances.

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.

12 January 2021

Lesley A Ward Legal Member

Date