



**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/20/2409**

**Re: Property at Flat 3, 12 Kensington Gate, Glasgow, G12 9LG (“the Property”)**

**Parties:**

**Mr Peter Slupecki, [REDACTED], Victoria [REDACTED] Australia (“the Applicant”)**

**Ms Gillian Brown, Flat 3, 3 Dundonald Road, Glasgow, G12 9LJ (“the Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that there had been a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011; and it would make an order for payment of £1,000.00 in favour of the Applicant.**

**Background**

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment for failure to lodge a tenancy deposit into an approved scheme within the prescribed time period.
2. The application contained,
  - a. a copy of the tenancy agreement.
  - b. evidence of the end of the tenancy (electricity bill)
  - c. safe deposit Scotland information

3. A case management discussion had taken place on 13 January 2021 reference is made to that case management discussion note.
4. The Applicant attended today's telephone case management discussion. The Respondent also attended and was represented by Ms Rigano-Tahu, Letting Manager from Ivy Property.

#### Case Management Discussion

5. The Applicant advised that he had paid the tenancy deposit for the property on 4 and 11 July 2019. He had taken entry of the property on 12 July 2019. He had lodged a copy of the tenancy agreement for the property with his application. He had provided his notice to terminate the lease on 9 October 2020. He advised that the tenancy deposit was not protected until 5 November 2020. He and his family vacated the property on 11 November 2020. He and his family returned to Australia at that time. He advised that it had been very stressful to find out that the deposit had not been protected. He advised he and his wife had not been sure if they had failed to do something and that had led to the deposit not being protected.
6. He advised that the stress of moving back to Australia, COVID-19 and finding out that his deposit had not been protected for the majority of his tenancy had been very stressful to him and his wife. It had caused him and his wife to bicker. His wife had suffered from psoriasis due to the stress. He confirmed that he had received notice that the deposit was secured in an approved scheme on 5 November 2020. He also confirmed that the deposit had been returned to him in full.
7. The respondent's representative advised that she was appearing for the respondent in this matter. She advised that her company had been the letting agents employed by the respondent to deal with the applicant's tenancy. She confirmed that they did not dispute any of the facts set out by the applicant in relation to the payment of the deposit; the commencement of tenancy; the end of tenancy; the date of lodging the deposit in an approved scheme; and that it had been repaid in full at the end of the tenancy.
8. She advised that the responsibility for lodging the deposit was the letting agents. She had submitted a letter setting out the letting agents' position in relation to this matter. She advised that at the time that the deposit had been received from the applicant there had been a number of things happening in the company which had led to the failure of the deposit being lodged. She had had a heart attack and had to take time off from work for a period of 5 months; and she had not been replaced during that time. The company had also changed over with their databases. This system transfer had not gone smoothly and took time to complete. The transfer of the accounts to the new database had led to the applicant's account being missed. She advised that this was the only deposit which had been missed.

9. The respondent's representative advised that the company had conducted an audit and had thereafter undertaken further audit to ensure that there were no other missed deposits. She advised that this had been the only one.
10. She advised that there were 6 members of staff in the company. She advised that the company had operated since 2007. This was the first time that the company had had to attend the First Tier Tribunal to address any issue in terms of their practice.
11. Deposits were a matter they dealt with on a day to day basis. She advised that the company were well aware of the rules regarding deposits and the need to protect them. She advised that the managing director had worked in accordance with the Law Society's Rules on dealing with deposits since the rules had been implemented. She submitted that it was an issue that the company took seriously.
12. She advised the company became aware of the failure to lodge the applicant's deposit when the respondent had contacted her, towards the end of the tenancy, to advise that there may be an issue with a light fitting, and they may require to withhold part of the deposit. At that point she checked on the deposit and discovered that it had not been lodged in an approved scheme. As soon as she was aware of this, she arranged to have it lodged in an approved scheme. The deposit had been repaid to the applicant.

#### Findings in Fact and Law

13. The Tribunal made the following findings in fact:-
  - a. The Respondent was the landlord, and the Applicant was the tenant.
  - b. That the Applicant had paid the Respondent a tenancy deposit on 4 and 11 July 2019 totalling £2,392.50.
  - c. That the tenancy had commenced on 12 July 2019.
  - d. That the tenancy deposit was lodged in an approved scheme on 5 November 2020.
  - e. That the tenancy had ended on 11 November 2020.
  - f. That the tenancy deposit had not been lodged with an approved tenancy deposit scheme within 30 working days of the tenancy commencing.
  - g. The tenancy deposit had been repaid in full to the Applicant.

## Reasons for Decision

14. The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits, and relevant to this case are the following regulations:-
- 15.3.—(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;
  - ...
  - b. ...
16. Regulation 9 provides that 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.
17. Regulation 10 provides that if satisfied that the landlord did not comply with any duty in regulation 3 then the first tier tribunal — must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and may, as it 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.
18. The Respondent accepted that the deposit had not been paid into an approved scheme in accordance with the terms of the regulations. Therefore, the terms of Regulation 10 are engaged, and I must order that the Respondent pay the Applicant an amount not exceeding three times the amount of their tenancy deposit. The amount to be paid requires to be determined according to the circumstances of the case, the more serious the breach of the regulations the greater the penalty.
19. In this case, I consider that a sum of £1,000.00 would be appropriate.
20. While there has been a breach of the regulations, I do not consider that it has been a very serious breach; and any penalty should therefore be at the lower end of the scale.
21. In considering what penalty to impose, I have had regard to the verbal and written submissions of both parties.
22. The respondent had arranged for her letting agent to manage the tenancy for her. It was the letting agent who appeared today to speak on behalf of the respondent in relation to why the deposit had not been paid into an approved scheme. It is those facts which are relevant to deciding this matter.

23. The deposit was not lodged with an approved scheme for almost all of the duration of the tenancy. I consider that the amount of the deposit was a fairly significant sum left unsecured for over 16 months. The deposit had been paid to a firm of letting agents who advised that they had been trading for 13 years; they should have been well aware of their duties to place the deposit into an approved scheme; and they had failed to do so. This failure has led to a breach of the tenancy deposit regulations. I consider that those circumstances are relatively serious.
24. The applicant advised that this failure, when it came to light caused him and his wife stress. He advised that they were not experienced in Scots law and they had other issues to be dealt with at the end of the tenancy, and this was another worry for them. I place some weight on the impact that the applicant said this failure caused him and his wife, although I do note that he did not become aware of the failure to put the deposit into a scheme until after it had been placed in a scheme and was therefore safe; and further the whole deposit appears to have been returned to him timeously.
25. In mitigation, the Respondent accepted the breach in full and had not sought to dispute liability. The representative provided an explanation for what happened; that it only came to light when the respondent had been in touch to make them aware of a potential claim on the deposit. This explanation appears to me to be a credible and reasonable explanation of what happened. They advised that they have never had to attend the First Tier Tribunal in relation to any concerns regarding their practice; and that as soon as they were aware of the failure to lodge the deposit, they lodged it.
26. I note the issues which may have given rise to the failure to lodge the deposit namely, the ill-health of a senior member of staff and the implementation of a new computer database. While I consider that these matters offer mitigation to the respondent, I nonetheless consider the issue of staffing and implementation of a new database does not absolve a letting agent of their professional duties. The failure to ensure proper accounting practice for over 16 months would appear to me to show a failure on the part of the letting agents to discharge their professional duties and this cannot wholly be excused. I do not however consider that their conduct was wilful. There was also does not appear to have been any delay with the return of the deposit at the end of the tenancy.
27. For all of those reasons, while I consider that the matter is sufficiently serious that a penalty needs to be imposed that is more than minimal; the penalty should be towards the lower end of the scale, as I do not consider that there has been a blatant or reckless disregard for the regulations. I do consider that the breach continued for a fairly significant period of time and it is not clear when it would have been rectified had the applicant not given notice that his tenancy was ending, and the respondent contacted the letting agent to advise that a claim may be made on the deposit. Accordingly, I consider that a penalty of £1,000 would be appropriate.

## **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.**



---

**Legal Member: Melanie Barbour**

---

**Date: 16 February 2021**