



**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/20/2601

Re: Property at 27 Drum Cottages, Edinburgh, EH17 8RL (“the Property”)

Parties:

**Miss Caela Walker, Mr Mark Pennycuik, 31 North Bughtlinfield, Edinburgh, EH12
8XZ (“the Applicant”)**

**Miss Julie Darling, Capielaw Farmhouse, Rosewell, Midlothian, EH24 9EE (“the
Respondent”)**

Tribunal Member:

Lesley-Anne Mulholland (Legal Member)

DECISION

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Respondent has breached her obligations
under Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations
2011.**

BACKGROUND

1. On 16 May 2020 the respondent let to the applicants the property at 27 Drum Cottages, Edinburgh, EH17 8RL. A Tenancy agreement was entered into which required payment of a deposit of £650.00. On 16 May 2020 the applicants paid the tenancy deposit to the respondent along with their first month’s rental. The tenancy ended on 26 December 2020.

2. I considered the application, alongwith all accompanying papers, including the tenancy agreement, alongwith the Certificate of Service. I considered the oral evidence and submissions before reaching my decision.

THE CASE MANAGEMENT DISCUSSION

3. The Case Management Discussion (CMD) took place remotely by teleconference on 26 February 2021 at 2pm. Both the applicant and the respondent were present.
4. There were no apparent difficulties with sound or connectivity issues. I was grateful for the patience and understanding shown by those present which allowed the Case Management Discussion to proceed remotely during the current pandemic. I was satisfied those taking part in the discussion had a reasonable opportunity to put their points across and that the Case Management Discussion was fair. No complaint about the lack of effective participation caused by the remote hearing was brought to my attention.
5. All parties agree that the deposit was not lodged with an approved tenancy deposit scheme within 30 working days of commencement of the tenancy. Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 tells me that, in light of that admitted fact, I must make a payment order against the respondent. I can dispose of this case today, without the need for a further hearing.

FINDINGS IN FACT

- (a) In May 2020 the respondent agreed to let the dwelling-house at 27 Drum Cottages, Edinburgh, EH17 8RL to the applicant. A tenancy agreement was entered into setting out the agreed rental and requiring a deposit of £650.00.
- (b) Before taking entry the applicant paid a deposit of £650.00 to the respondent.
- (c) The tenancy commenced on the 16th of May 2020.
- (d) The tenancy deposit should have been paid into an approved scheme no later than 29 June 2020.
- (e) The respondent sent the deposit from her bank to an approved scheme on 4 July 2020 and £650 was taken by the scheme on 6 July 2020.
- (f) The deposit was 5 days late.

- (g) The respondent is apologetic for the failure to pay the deposit into an approved scheme in time.
- (h) The applicants were not disadvantaged by the late payment of the deposit into an approved scheme.
- (i) The respondent was looking after her husband in his 80s and her friend who is 85 during the pandemic at the time when the deposit should have been paid into an approved scheme.
- (j) As soon as the respondent realised her failure, she took immediate steps to pay the deposit into an approved scheme and alerted the applicants of her failure and of the action she had taken to remedy it.

REASONS FOR DECISION

6. Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 required the respondent to pay the deposit of £650 within 30 working days of the beginning of the tenancy. Regulation 2 defines 'working day' as a day that is not a Saturday or Sunday, nor any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.
7. The tenancy commenced on the 16th of May 2020. It is beyond dispute that a deposit of £650.00 was paid at the commencement of the tenancy. The only bank holiday during the relevant period was on 25 May 2020. By my calculations, the tenancy deposit should have been paid into an approved scheme no later than 29 June 2020.
8. According to the unchallenged account of the respondent, she sent the deposit from her bank account to an approved scheme on 4 July 2020 and the £650 was taken by the scheme from her account on 6 July 2020. Taking 6 July 2020 as the relevant date, this means that payment of the deposit into an approved scheme was delayed by 5 days.
9. The tenancy has ended and the deposit was repaid timeously after a small deduction for cleaning. The text messages between the parties demonstrate that the respondent has acted fairly towards to applicants and was well thought of.
10. Miss Walker stated that was unaware that the respondent had failed to pay the deposit into an approved scheme until the scheme contacted her to let her know. By then the deposit had been received. I am therefore satisfied that the applicants did not suffer because of the delay and were not deprived of the use of the deposit monies as these were repaid in time upon the applicants

vacating the property. Nevertheless the applicants seeks a payment order of the full amount of the deposit in the sum of £650.00.

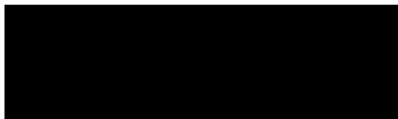
11. The respondent acknowledges her error. The respondent has no history of breaches of the 2011 Regulations. A full accounting for the deposit has been made. Against those mitigating factors I must balance the undisputed fact that the deposit was unprotected for 5 days.
12. The purpose of the order is not to enrich the applicant. The purpose of the order is to punish the respondent; to mark society's displeasure; to protect society and to ensure the enforcement of the 2011 Regulations in the future.
13. The respondent has produced a detailed letter apologising for her failure and setting out the difficulties she was under at the time. She was clear at the hearing to point out that she does not wish to excuse her failure, but rather to explain it. She stated that she was very busy during the pandemic and missed the time limit. She normally commences tenancy agreements on the 1st of the month however had agreed to commence this tenancy on the 16th of the month. It was during the pandemic. Her husband is in his 80s and her friend is 85. She was doing a lot for them at that time. As soon as she realised her error, she took immediate steps to pay the deposit into an approved scheme and contacted the applicants to alert them of her failure, of the actions she had taken to remedy it and to offer her apology.
14. The amount of the deposit was £650. The deposit was paid into an approved scheme 5 days later than it should have been. The lease endured for 224 days. Although the 2011 Regulations have been breached, the breach is not at the most serious end of the scale. It is reasonable to take the maximum penalty and divide by the duration (in days) of the lease, then apply a multiplier of the number of days during which the deposit was unnecessarily unprotected. That brings out a figure of £44 (rounded up) which adequately reflects the seriousness of the breach of the 2011 Regulations.
15. The appropriate level of payment order is £44.

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the respondent for payment to the applicant of £44 within 14 days of service of this order.

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

Date 26 February 2021