



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber)  
Chamber Ref: FTS/HPC/PR/21/0005**

**Re: Property at Dargai Cottage, South Road, Cupar, Fife, KY15 5JG (“the Property”)**

**Parties:**

**Mrs Gladys Calley, c/o Mr Thomas Eric, 10/6 Cobbinshaw House North, 18 Calder Gardens, Edinburgh, EH11 4JP (“the Applicant”)**

**Ms Claire Davidson, 74 Main Street, Leuchars, Fife, KY16 0HE (“the Respondent”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**BACKGROUND**

1. By lease dated 31<sup>st</sup> October 2013 the respondent let the property to the applicant;
2. A tenancy deposit of £650 was paid by the applicant to the respondent;
3. The lease ended on 4<sup>th</sup> November 2020;
4. On 3<sup>rd</sup> January 2021 the Tribunal received an application seeking an order in terms of Rule 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“The TDS Regs”);
5. The Applicant had lodged a separate application with the Tribunal seeking an order for repayment of the deposit, under deduction of 4 days rent which she accepted was due to the Respondent. That application, however, was withdrawn on the basis that, by the time of this Case Management Discussion, the deposit had been repaid in full;
6. The Respondent, prior to the Case Management Discussion, lodged written submissions in which she accepted that the deposit funds had not been

lodged with an approved scheme and also that, at the conclusion of the tenancy, she decided that the deposit would not be returned due to issues arising during and at the termination of the tenancy. In the submissions the respondent also stated

*“I was not familiar with the importance of the deposit scheme and, as I had done previously with other tenants, I placed the deposit in my account and did not think anything more of it.”*

7. The Applicant had, in fact, prior to raising the proceedings, corresponded with the Respondent requesting return of the deposit and indicating that, if the deposit was returned, the matter would be taken no further. The deposit was not returned resulting in the proceedings being raised;

## **THE CASE MANAGEMENT DISCUSSION**

8. The Case Management Discussion was conducted by teleconference. The parties both participated in the proceedings;
9. The application set out the position of the Applicant. The Applicant, however, forwarded an email to the Tribunal on 4<sup>th</sup> March 2021 in which she indicated that she was considering withdrawing her application but that would have been conditional upon other matters being agreed with the Respondent and upon consideration of “good references in future” being provided by the Respondent;
10. The Tribunal enquired of the Applicant as to what her position was. Was she proceeding with the application or was she withdrawing it? Ultimately, the applicant did not withdraw the application and decided to leave matters in the hands of the Tribunal;
11. The Respondent had previously lodged written submissions which set out her position. The Tribunal highlighted to the Respondent that it had some difficulty with her comment, towards the end of her submissions that  
“there is no case to answer in this Tribunal. Ms Calley has had her deposit returned ....”  
it was pointed out that the return of the deposit was a separate and distinct matter. The Tribunal was considering issues arising from her failure to lodge the deposit with an approved scheme. The Tribunal explained the purpose of the scheme and, in doing so, the Respondent accepted that it provided protection to both tenants and landlords;
12. The Respondent intimated that she was not an experienced landlord. She clarified one part of her submissions when it was referred to by the Tribunal. In her written submission she stated  
“I was not familiar with the importance of the deposit scheme ...”  
She clarified that she should, in fact, have said that she was not aware of the deposit scheme at that time. Her written submissions, however, went on to state that she clearly became aware of the scheme thereafter and had subsequently lodged deposits for another property in a tenancy deposit scheme. Despite that she never lodged this deposit at any stage. She explained that as being an “oversight” but could not provide any reasonable explanation as to why any initial oversight was not corrected at any point in the many years which passed following the commencement of this tenancy;
13. The Tribunal pointed out that an important part of the TDS Regs was the provision within them for a cost free dispute resolution process. That was

significant in this case because, at the end of the tenancy, there was a dispute about the deposit and a straight forward refusal to return the deposit funds. As a result, the Applicant was deprived of an important protection provided by the TDS Regs. The deposit funds were only returned sometime later and after these proceedings were raised;

14. The Respondent made reference to the fact that, in the course of the tenancy the applicant had fallen into rent arrears and she was tolerant with her in relation to those. While there was no dispute about that as a matter of fact, the Tribunal advised that it was not a relevant consideration in relation to these proceedings. Indeed, had the deposit funds been lodged with an approved scheme, the Respondent may well have been able to make an application herself for them to be released to her to cover rent arrears and, in that regard, a protection available to her was absent as a result of her failure to lodge the funds;
15. Further matters discussed are detailed below in relation to the reasons for the decision made;

## **FINDINGS AND FACT**

16. The Tribunal found the following facts to be admitted or proved:-
  - a) By lease dated 31<sup>st</sup> October 2013 the respondent Let the property to the applicant;
  - b) A tenancy deposit of £650 was paid by the applicant to the respondent;
  - c) The lease ended on 4<sup>th</sup> November 2020;
  - d) The deposit funds were never lodged with an approved tenancy deposit scheme;
  - e) The Respondent refused to return the deposit funds when requested to do so following termination of the lease;
  - f) On 3<sup>rd</sup> January 2021 the Tribunal received an application seeking an order in terms of Rule 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“The TDS Regs”);

## **REASONS FOR DECISION**

17. The tribunal considered the following matters in reaching its decision:-

### **A. THE TDS REGULATIONS**

These provide as follows:-

***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; and***

**(b) provide the tenant with the information required under regulation 42.**

**(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.**

**(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—  
(a) in respect of which the landlord is a relevant person; and  
(b) by virtue of which a house is occupied by an unconnected person,**

**unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.**

**(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.**

**9.(1) A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.**

**(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.**

**10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—**

**(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and**

**(b) may, as the sheriff 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.**

References to “the sheriff” should now be read as referring to the First Tier Tribunal for Scotland.

## **B. EXPERIENCE OF THE LANDLORD**

The Respondent had been letting the property for a significant period of time. The tenancy commenced in 2013. The TDS Regs had been in existence prior to that. While the Respondent was not what might be referred to as a commercial landlord, she was not inexperienced. She advised that she had let this property to two other tenants before the Applicant. She was unaware of the TDS Regs at the time the deposit was received and that she had, as with previous tenants, elected not to lodge deposit funds with an approved scheme. Ignorance of the law, of course, is no defence and it became clear also that the Respondent did become aware of the TDS Regs but still failed to lodge the deposit thereafter;

## **C. REASON FOR FAILURE TO LODGE THE DEPOSIT FUNDS**

This was a conscious decision taken as a result of an apparent “oversight” and lack of knowledge of the TDS Regs at the time the deposit was received. There was no reasonable explanation for failure to lodge the funds thereafter when the Respondent became aware of the TDS Regs. It is difficult to identify any mitigating factors in this decision making process which appears to have been a clear decision to ignore legal provisions which were introduced for the protection of tenants and to ensure that deposit funds were dealt with appropriately at the end of, or during, a tenancy. Significantly, the TDS Regs make provisions for a cost free dispute resolution service in the event of there being disagreement between the parties and the ability of the applicant to utilise such a service was frustrated. Indeed, in correspondence between the parties prior to the raising of proceedings, in particular in an email dated 18<sup>th</sup> November 2020, after referring to certain matters the respondent considered to be issues following the termination of the tenancy, she stated “there will be no return of deposit”. This is a type of mischief the TDS Regs are designed to protect against;

## **D. THE PERIOD OF TIME FOR WHICH THE DEPOSIT REMAINED UNPROTECTED**

The deposit remained unprotected for the entire duration of the tenancy, a period in excess of 7 years. The deposit funds were never lodged at any point, even following the termination of the tenancy and, accordingly, were never protected;

## **E. WHETHER THE FUNDS WERE AVAILABLE TO LODGE**

The Respondent advised that the funds were available at the termination of the tenancy but that was not confirmed before the Tribunal. What is

now known is that the deposit was repaid, in full, on 2<sup>nd</sup> February 2021 but only after the raising of these proceedings before the Tribunal.

18. Having regard to those factors, the Tribunal considered that this was a breach of the TDS Regs which was towards the upper end of any scale of such breaches. The Tribunal was dealing with

- a landlord who had previous experience of letting the Property,
- who appeared to be aware of the regulations, or became aware of them, but considered that they were not important,
- who had failed, at any point, to lodge the deposit funds with an approved scheme,
- who had refused to return the deposit funds at the termination of the tenancy and
- who was maintaining in her submissions that there was “no case to answer”;

19. In all the circumstances, the Tribunal considered that, having regard to the factors referred to, an order for payment in the sum of two times the amount of the deposit is made. But for the fact that the deposit funds were returned, in full, albeit belatedly, the Tribunal would have imposed the maximum penalty available to it.

## **DECISION**

The Tribunal granted an order against the respondents for payment to the applicant in the sum of One thousand three hundred pounds (£1,300.00) 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.**

**Virgil Crawford**

**5 March 2021**

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**Legal Member/Chair**

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**Date**