



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/22/0138**

**Re: 0/1, 67 Marine Parade, Kirn, Dunoon PA23 8HF (“the Property”)**

**Parties:**

**Yvonne Notman, 0/1, 67 Marine Parade, Kirn, Dunoon PA23 8HF (“Applicant”)**

**Legal Services Agency Limited, 9 Sir Michael Street, Greenock PA15 1PQ (“Applicant’s Representative”)**

**Marion Wedlock, 5/12 Lochinvar Drive, Edinburgh EH5 1GJ (“Respondent”)**

**Tribunal Members:**

**Joan Devine (Legal Member)**

**Decision :**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay to the Applicant the sum of £600.**

**Background**

1. The Applicant made an application in Form G ("Application") dated 13 January 2022 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("Rules") stating that the Respondent had failed to timeously lodge a tenancy deposit in an appropriate scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("2011 Regulations"). The documents produced to the Tribunal by the Applicant were:
  - A tenancy agreement dated 31 July 2016. The tenancy commenced on 1 August 2016.
  - Letter from Safe Deposits Scotland to the Applicant dated 25 November 2021 which stated that the “new deposit” for the Property was protected with Safe Deposits Scotland from 24 November 2021.

2. A copy of the Application and notification of a Case Management Discussion ("CMD") fixed for 31 March 2022 was given to the Respondent by Sheriff Officer on 16 February 2022. In advance of the CMD the Respondent provided a written submission in an email dated 6 March 2022.

### **Case Management Discussion ("CMD")**

3. A CMD took place on 31 March 2022 by conference call. The Applicant was in attendance along with Luisa Fidelo of the Applicant's Representative. The Respondent was also in attendance. Martin Wedlock attended as a supporter to the Respondent.
4. The Tribunal noted that in terms of the tenancy agreement, the tenancy had commenced on 1 August 2016 and the deposit was £300. Parties confirmed that this was agreed. The Tribunal asked if the tenancy was ongoing. The Respondent said that it was. The Tribunal asked when the deposit was paid. The Respondent said that it was paid on 31 July 2016. The Applicant confirmed that this was agreed. The Tribunal noted the letter from Safe Deposits Scotland stated that the deposit was not protected until 24 November 2021. The Respondent confirmed that this was correct.
5. The Tribunal noted the terms of sections 3, 9 and 10 of the 2011 Regulations and asked the Respondent why the deposit was not lodged with an approved scheme within 30 working days of commencement of the tenancy. She said that the tenancy had been set up on an informal basis as she knew the Applicant's father. The Tribunal noted that a short assured tenancy agreement had been entered into. The Respondent said that she did not know the Applicant at the time of entering into the tenancy and wanted to have something in writing. She said that at that time she did not know anything about the 2011 Regulations. She said that it was only when she had an exchange with the Applicant about the return of the deposit that she looked into matters in October / November 2021. At that point she realised the need to be registered as a landlord and to lodge the deposit in an approved scheme. She said that her application to register as a landlord was being processed by Argyll and Bute Council. The Respondent said that the Applicant had made irrational complaints about the state of repair of the Property. This was the subject of a separate Tribunal application. The Respondent said that she did not own any other property which she let to third parties.
6. On behalf of the Applicant Ms Fidelo submitted that the breach was serious as the deposit was not placed in an approved scheme until some 5 years after the tenancy commenced and in addition, the Respondent had not provided to the Applicant the information required by section 42 of the 2011 Regulations. She

referred to the decision of Sheriff Welsh in *Jenson v Fappiano* and submitted that the sanction should be fair and proportionate. She referred to the decision of the Inner House in *Tenzin v Russell* where the Court noted the role of judicial discretion. Ms Fidelo submitted that ignorance of the 2011 Regulations was not an excuse.

7. The Respondent said that she had sought to “put things right” by lodging the deposit in an approved scheme. She said that she knew there would be consequences. She said that she had treated the Applicant fairly and felt matters had now developed into a personal vendetta.
8. The Tribunal noted that parties were in agreement regarding the date on which the tenancy commenced, the amount of the deposit, the date on which the deposit was paid, that it had not been lodged timeously in accordance with the 2011 Regulations and that it had not become protected until 24 November 2021. The Tribunal expressed the view that it had sufficient information to proceed to make a decision without the need for a further Hearing. The Parties stated that they were content for the Tribunal to make a decision on the basis of the information presented.

### **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement which commenced on 1 August 2016.
2. The Applicant paid to the Respondent a deposit of £300 on 31 July 2016.
3. The deposit became protected by Safe Deposits Scotland on 24 November 2021.
4. The deposit was not paid to the administrator of an approved scheme in compliance with the timescales set out in Regulation 3 of the 2011 Regulations.
5. The deposit of £300 was paid into an approved scheme more than 5 years outwith the timescales stated in the 2011 Regulations.
6. At the time of receipt of the deposit from the Applicant, the Respondent was unaware of the need to lodge the deposit in an approved scheme in accordance with the 2011 Regulations.

## **Reasons for the Decision**

9. Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme administrator of an approved scheme within 30 working days of the beginning of the tenancy, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. The Tribunal was satisfied that the Respondent did not lodge the deposit in accordance with the timescales required by the 2011 Regulations. The deposit was lodged more than 5 years late.
10. The amount to be awarded is a matter for the discretion of the Tribunal having regard to the factual matrix of the case before it. The Tribunal considered all of the circumstances presented to it and found it to be of significance that the deposit was unprotected for a period exceeding 5 years. The Tribunal noted that the Respondent was not an experienced landlord, that she admitted that there had been a breach and that she had, belatedly, placed the deposit in an approved scheme. The explanation given for the failure to comply with the 2011 Regulations was lack of awareness of the Regulations. Whilst the Tribunal accepted that explanation, ignorance of the law is not an excuse for non-compliance.
11. Having regard to factors put forward by both parties the Tribunal determined that the sanction should be £600 in the particular facts and circumstances of this case. This figure is double the deposit.

## **Decision**

The Tribunal granted an Order for payment of £600 in terms of Regulation 10(a) of the 2011 Regulations.

## **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.**

**J. Devine**

**Legal Member:**

**Date: 31 March 2022**