



**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/21/0493

Re: Property at 60 Main Street, Kilwinning, KA13 6AQ (“the Property”)

Parties:

Mr Stuart Ogilvie, 93 Paterson Avenue, Irvine, KA12 9LW (“the Applicant”)

**Mr Joseph Ballantyne, Mrs Frances Ballantyne, 4 Academy Road, Irvine, KA12
8RL (“the Respondent”)**

Tribunal Members:

Lesley Ward (Legal Member)

1. Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) being satisfied that the Respondent as landlord of the property at 60 Main Street Kilwinning KA12 9LW (“the Property”) 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 seven hundred and twenty seven pounds (£727).

1. 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 a penalty in terms of Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, ‘the regulations’. The application was made by Mr Alastair Meek on behalf of the applicant Mr Stuart Ogilvie. The applicant attended the CMD and he was represented by Mr Meek. Both respondents attended.

2. The tribunal had before it the following copy documents: -

- (1) Application dated 4 March 2021.
- (2) Tenancy agreement.
- (3) Respondent's submission dated 26 April 2021.
- (4) Letters from the 3 deposit schemes confirming the deposit was not lodged.

Discussion

3. It was agreed that the tenancy started on 6 September 2020 and came to an end in January 2021. The applicant stated this was 1 January 2021 but the respondents stated it was around 17 January 2021. It was agreed that a deposit of £485 was paid and that this was not lodged in a deposit scheme. It was agreed that the deposit has not been returned.

The applicant's position.

4. The applicant was seeking a penalty on the basis that his deposit was not lodged in a recognised deposit scheme for the duration of the tenancy and the deposit has been retained by the respondents.

The respondent's position.

5. The respondents are registered landlords and they own three properties which they rent out including this property. The property has been rented out for around 13 years. It is not their practice to take a deposit for the other two properties. They sometimes take a deposit for this property as tenants tend to rent it for short periods of time. The respondents were aware of the tenancy deposit scheme but did not realise that the scheme was mandatory. They did not realise the deposit should have been lodged within 30 working days.
6. The respondents are reputable landlords who always try to work with tenants. For example, they like to be flexible and find that it suits tenants not to pay a deposit. They also allowed the previous tenant in this property to live rent free for three months due to covid. The respondents accommodated the applicant by not taking issue with the fact that he left the property after only a few months when he should (in their view) have stayed for a minimum of six months.
7. The respondents have retained the deposit as they consider that the applicant has caused over £650 worth of damage to the property.

8. Findings in fact

- The respondents are the owners of the property.
- The applicant rented the property from the respondents from 6 September 2020 to around 17 January 2021.

- The applicant paid a deposit of £485 to the respondents in September 2020 as his landlords.
- The deposit was not lodged into an approved scheme within 30 working days of 6 September 2020.
- The deposit was never lodged.
- The deposit has been retained by the respondents.

Reasons

9. This was a breach of the regulations as the respondent's failed to lodge the deposit into a scheme within 30 working days. The respondents were not aware of their mandatory obligations to lodge the deposit. The respondents did not therefor carry out their other obligations in terms of regulation 42 of the regulations such as provide the applicant with their landlord registration details.

10. The tribunal reviewed all of the recent cases regarding tenancy deposit schemes and noted that in the case of Kirk-v-Singh 2015 SLT (Sh Ct) 111 Sheriff Jamieson was mindful of the need to:-

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

11. The tribunal considered this was not a minor breach. The respondents are not new landlords, and they should have been aware of the need to use the scheme. The respondents have been landlords of this property for 13 years and the deposit scheme came into force in 2011. The respondents have taken deposits for the property in the past and have never used the scheme. Further the respondents have retained the deposit due to the condition of the property. This was exactly the type of situation that the scheme was designed to avoid. The respondents also appeared to be in error in relation to the terms of the private residential tenancy they entered into with the applicant, expecting him to stay for a minimum of six months. On the other hand, it was not disputed that the respondents try to be good landlords and have had a good relationship with their other tenants. Their failure to lodge the deposit appeared to be due to their ignorance of their legal obligations to lodge any deposit they take from tenants. The tribunal was satisfied that it has sufficient information before it to make a decision and the procedure had been fair. Accordingly, the tribunal decided a penalty of one and a half times the deposit, namely £727, 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.



Legal member: Lesley A Ward.

Date: 6 May 2021