

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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 (the Regulations)**

**Chamber Ref: FTS/HPC/PR/21/0542**

**Re: Property at 25/1 Springfield Street, Edinburgh, EH6 5DE (“the Property”)**

**Parties:**

**Miss Francesca Challis - Thompson, 7/32 Portland Gardens, Edinburgh, EH6 6NQ (“the Applicant”)**

**Broughton Properties LTD, registered office 14 Rutland Square, Edinburgh EH1 2BD (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatridge (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined to grant an order against the Respondent for payment to the Applicants of the sum of £300 in terms of Regulation 10 (a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.**

**A: BACKGROUND:**

1. The application in terms of Rule 103 of the Procedural Rules was lodged by the Applicant and received by the Tribunal on 9 March 2021.
2. The Applicant further a copy of the tenancy agreement, , emails confirming end of the tenancy as at 9 December 2020 as per Exhibits 1.2, copy email requests for regarding deposit from Applicant to Respondent 19 June 2020 and 11 July 2020, response from Ms Crolla 11 July 2020, Deposit summary document, copy landlord registration and written representations headed Overview of Deposit with the application.
3. A Case Management Discussion (CMD) was scheduled for 29 April 2021 and the application intimated on the Respondent by Sheriff Officers on 26 March 2021. Sheriff Officers reported that the registered office of the Respondent is recorded as 14 Rutland Square, Edinburgh, EH1 21BD, which is the address at which service took place. The Tribunal noted the change of address of the registered office of the Respondent.

4. On 15 April 2021 the Respondent formally authorised Filomena Crolla to act on behalf of the Respondent and provided written representations
5. A postponement request dated 20 April 2021 from the Applicant was rejected by the Tribunal on 21 April 2021.
6. On 27 April 2021 the Applicant lodged a 31 page document under the description "additional evidence" with the Tribunal, which was copied to the Respondent.
7. On 28 April 2021 the Respondent lodged a 108 page document with the Tribunal headed Further submissions of information. This was copied to the Applicant on the day of the CMD.

## **B: EVIDENCE**

1. At the CMD both parties attended via telephone conference call. The Respondent was represented by Ms Crolla and the director of Broughton Properties Ltd, Mr J Crolla, also participated. Ms Chalis - Thomson participated.
2. At the start of the next CMD the legal member set out the purpose of the CMD and clarified the scope of an application under Rule 103. As it was admitted by the Respondent that the deposit had been lodged outwith the 30 working day period stated in Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (the Regulations) and that no formal notification of the information stated in Regulation 42 (2) had been sent to the Applicant. Both parties confirmed they did not consider that a hearing would be necessary as the factual background of the case was not in dispute. Both agreed that the majority of the documents and representations submitted in their emails were not directly relevant to the matter in hand. Both parties agreed that the landlord was correctly identified in the Application as Broughton Properties Ltd.
3. The Respondent had queried whether the application had been made in time. The legal member explained that the end date of the tenancy was not included in the calculation of the period of 3 months and thus an application made on 9 March 2021 was made within the relevant time frame provided in Regulation 9 (2) as it was made no later than 3 months after the tenancy had ended on 9 December 2020.
4. The Applicant confirmed that the tenancy commenced on 7 May 2020 and ended on 9 December 2020. Her landlord in the lease was Broughton Properties Ltd. Her position was that she had asked for information about the deposit in several emails over the weeks prior to the deposit being lodged and that she has not received a formal document setting out all the information required by Regulation 42 of the Regulations at any point. The deposit was lodged on 13 July 2020 with SafeDeposits Scotland (SDS) and she had received an email from them confirming this on 14 July 2020. She considered that there had been conflicting information about who the landlord was as this was not the person in the land register and she considers that she has never been given all the information required in Regulation 42. There had been doubt about the landlord registration as she had searched in June and not

found the registration on the register. Having been referred to Regulation 3 she confirmed that she had misunderstood the period within which a deposit had to be registered and had thought this was 30 days rather than 30 working days. She agreed that the date on which the deposit should have been lodged was 22 June 2020. At the time the tenancy ended the deposit was adjudicated on by SDS. The information received from the Respondent was initially that the deposit had been lodged when they emailed her on 11 July 2020, it then turned out that had not been correct. She wishes there had been better communication.

5. The Respondent's representative and Mr Crolla both admitted freely that the deposit had been lodged late. The explanation for this was given by Ms Crolla who stated she had taken on the task of lodging deposits for the business in May 2020 and this was the second one she would have dealt with. Because of the lockdown she moved house and then worked from home and was furloughed. Her recollection was that she had asked Mr Crolla, who had the bank card which was necessary to do internet banking for the Bank of Scotland account of the business, to deal with the lodging of the deposit because she was not in the office and did not have access to the card. He must have forgotten about this. She had told the Applicant on 11 July 2020 that the deposit had been lodged as this was what she understood to be the position. However, when she then checked she saw it had not been done by Mr Crolla and dealt with it. It was lodged with SDS on 13 July 2020. Ms Crolla confirmed that the deposit should have been lodged with SDS on 22 June 2020. When asked about the mechanisms in place to deal with such matters she confirmed that there was a physical diary in which reminders were entered, but this was in the office at the relevant time and she was working from home because of the Covid restrictions. She admitted that she had overlooked to send the Regulation 42 information to the Applicant but also stated that most of the information had been conveyed to the Applicant already. The business already had an account with SDS and is a property letting business with about 20 properties which has been a going concern since 1994. The landlord registration had been in place. Searching for the postcode would bring up the registration for the owners of the property, searching under the number the business. The business address was correctly stated on the tenancy agreement but the premises had since been sold and the business is now run from home until the new premises in Hanover Street can be occupied. J Crolla was the director of the business and his email address and telephone number had been stated on the tenancy agreement.
6. Mr J Crolla confirmed that at the relevant time he had the bank card and thus transfers could not be done by anyone but him. The office was closed and usually he and Ms Crolla worked in the same office where the diary and the bank card were kept. He should have put the deposit into SDS but had forgotten to do so. Normally in the office there would have been the diary and the card and the deposit would just have been lodged.
7. The Tribunal in making the decision had regard to the documents lodged. by both parties.

## **C THE LEGAL TEST:**

1. In terms of Rule 17 (4) of the Procedural Rules the Tribunal can do anything at a CMD it can do at a hearing.
2. In terms of Rule 18 (1) of the Procedure Rules the First-tier Tribunal—(a) may make a decision without a hearing if the First-tier Tribunal considers that—  
(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and (ii) to do so will not be contrary to the interests of the parties;
3. In terms of Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (the Regulations) an application under that Regulation must be made within 3 months of the end of the tenancy.
4. In terms of Regulation 10 “if satisfied that the landlord did not comply with any duty in Regulation 3 the First tier Tribunal  
(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 First tier Tribunal 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.”
5. In terms of Regulation 3 (1) "A landlord who had received a tenancy deposit in connection with a relevant tenancy must, within 30 days of the beginning of the tenancy (a) pay the deposit to the scheme administrator of an approved scheme;
6. In terms of Regulation 42.—(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).
7. (2) The information is—  
(a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;  
(b) the date on which the tenancy deposit was paid to the scheme administrator;  
(c) the address of the property to which the tenancy deposit relates;  
(d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;  
(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and  
(f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.

## **D: FINDINGS IN FACT**

**Based on the documents lodged and the discussion at the CMD the Tribunal makes the following findings in facts, which were matters not in dispute between the parties:**

1. The Applicant and Respondent were the tenant and landlord for a Private Residential Tenancy over the property from 7 May 2020 until 9 December 2020.
2. The application was made within 3 months of the end of the tenancy.
3. The full deposit amount of £730 was paid by the Applicant to the Respondent prior to the start of the tenancy.
4. The deposit was lodged with SDS on 13 July 2020.
5. The deposit should have been lodged within 30 working days of the commencement of the tenancy and thus by 22 June 2020.
6. For the period from 22 June 2020 to 13 July 2020 there was a delay in the deposit being lodged.
7. The Respondent is a commercial landlord with 20 properties and has been in the business of letting properties since 1994.
8. The company is a limited company and Mr J Crolla is the director of the company.
9. In clause 2 of the tenancy agreement the landlord registration, address, email and telephone number of the Respondent were provided, the email address and telephone numbers being those of the company director and Ms Crolla, who dealt with administrative matters for the company.
10. SDS, the registered scheme confirmed to the Applicant on 14 July 2020 that the deposit had been registered and gave her details of how to access the DAN number and Deposit Certificate.
11. Clause 10 of tenancy agreement provides the deposit amount, contact details of the registered scheme and sets out under what circumstances the deposit can be retained.
12. The Respondent had a SDS account prior to the start of the tenancy.
13. The Respondent was fully aware of the obligations of landlords under the Regulations.
14. The Respondent had systems in place to lodge deposits for tenancies, which was in form of a physical paper diary.
15. A bank card was required to make online transactions from the business account. The business had only been issued with one online banking card to do such transactions.
16. Normally the diary and bank card are kept in the office.
17. In May 2020 the office was closed due to Covid restrictions and Ms Crolla worked from home. At that time she had no access to the card and diary. The diary was in the office. The bank card was with the company director.
18. The Applicant had requested information about the deposit and the information under Regulation 42 on several occasions prior to 13 July 2020.
19. Through miscommunication neither the company director nor Ms Crolla dealt with the lodging of deposit. Ms Crolla erroneously thought that the company director had dealt with the lodging of the deposit when she provided that information to the Applicant on 11 July 2020.
20. The deposit was adjudicated on at the end of the tenancy by SDS and paid to the Respondent.
21. The breach of the Regulations was admitted by the Respondent in the representations to the Tribunal on 20 April 2021.

## E: REASONS FOR DECISION:

1. The facts of the case are not in dispute. There is no need for a hearing. The tribunal was accordingly able to make a decision after the CMD and without a full hearing on the basis of the information provided by both parties.
2. It was admitted by the Respondent and also clear from the documents lodged, that in this case a deposit of £730 was paid to the Respondent prior to the start of the tenancy on 7 May 2020 and that the deposit was not lodged until 13 July 2020.
3. Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 is a regulatory sanction to punish the landlord for non-compliance with the regulations. The non-compliance with the Regulations is not disputed by the landlord. Ultimately the Regulations were put in place to ensure compliance with the Scheme and the benefits of dispute resolution in cases of disputed deposit cases, which the Schemes provide.
4. In the case *Tenzin v Russell*, of 20 December 2013, Sheriffdom of Lothian and Borders, Sheriff Principal Stephen stated at para 19 *"There are no rules as to the approach that the court should take in assessing the amount of the order. The court must make an order and it is therefore reasonable to read into the regulations that Parliament intended to leave it entirely to the court to determine the level of penalty to impose. The regulations do not enumerate any matters or criteria which the court must have regard to. Accordingly, the sheriff has complete discretion as to the level of the order and is constrained only by the amount of the deposit and a triple multiplier. The sheriff, of course, will have regard to any evidence offered by way of mitigation. In dealing with non-compliance no distinction has been drawn by the legislators between the careless or devious; the experienced or inexperienced, the culpable or inadvertent. Likewise the strict liability consequences of non-compliance allow the court to promote rigorous application of the regulations pour encourager les autres. In other words deterrence."*
5. The Tribunal considers that the discretion of the Tribunal is correctly exercised in the manner set out in the case *Jenson v Fappiano* (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015 by ensuring that it is *"fair and just, proportionate"* and informed by taking into account the particular circumstances of the case. The Tribunal has a discretion in the matter and must consider the facts of each case appropriately. In that case the Sheriff set out some of the relevant considerations and stated that the case was not one of *"repeated and flagrant non participation in, or non-compliance with the regulations, by a large professional commercial letting undertaking, which would warrant severe sanction at the top end of the scale"*. It was held that *"Judicial discretion is not exercised at random, in an arbitrary, automatic or capricious manner. It is a rational act and the reasons supporting it must be sound and articulated in the particular judgement. The result produced must not be disproportionate in the sense that trivial noncompliance cannot result in maximum sanction. There must be a judicial assay of the nature of the noncompliance in the circumstances..."*

6. The landlord in this case is not an individual amateur landlord but a company with a substantial property stock engaged in the letting of residential property since 1994.
7. The Respondent was fully aware of the obligations of a landlord under the Regulations. It is accepted by the Tribunal that the Respondent had the account for lodging a deposit in place and had put in place a paper based mechanism for ensuring that deadlines in connection with the business operation were noted and would be noticed. The Covid restrictions meant that rather than working from the office, staff, such as Ms Crolla, worked from home and because the diary was in the office and not where staff were working, the diary mechanism did not work.
8. Covid restrictions had also led to the bank card required for transactions for online banking not being with Ms Crolla, who was supposed to deal with the lodging on deposits. Mr Crolla forgot to act on the conversation Ms Crolla stated she remembers when she asked Mr Crolla to deal with the matter because she had no bank card to do the transfer.
9. The Tribunal considers that in this case the mechanisms to ensure the lodging of the deposit for the tenancy were insufficient in the circumstances of Covid related home working, which was a material factor in the delay arising.
10. Ms Crolla overlooked the need for the provision of intimation of the information stated in Regulation 42 to the Applicant in a formal document partially due to, as she admitted, her lack of routine with the task and partly through the upheaval of moving and home working.
11. The Tribunal also took into account that the information required in Regulation 42 (2) apart from written confirmation of the date when the payment was received by the landlord was available to the Applicant in different locations such as the correspondence with SDS and the tenancy agreement. The Applicant appeared to have been aggrieved that the landlord's address was not clear to her, however this was stated in the tenancy agreement and in any event is not information that has to be provided under Regulation 42. Although there was no formal receipt for the deposit lodged in evidence, which would be required under Regulation 42, it was clear that the payment of the deposit was never an issue between the parties.
12. Whilst the deposit had been paid into the registered scheme with a delay of 20 days importantly, the deposit was protected at the end of the tenancy, which is the time when decisions about the return of the funds are made and the Applicant did have access to the dispute resolution scheme at the relevant time. Ultimately the main goal of the Regulations, that both parties have access to the dispute resolution mechanism when the tenancy ends, was achieved in this case and the deposit returned to the Applicant in full.
13. The Tribunal believed that the late lodging of the deposit was a genuine oversight due to miscommunication and human error and that it was in no way



a deliberate non compliance with the Regulations. The human error led to a delay, which was not picked up by adequate audit measures within the business for 20 days and the failure to provide the information in a notification to the tenant.

14. In terms of Regulation 10 (a) if satisfied that the landlord did not comply with any duty in regulation 3 the Tribunal must make a payment order between £0.01 and three times the deposit, which in this case would be a maximum amount of £2,190. Applying the considerations as set out above, the Tribunal does not consider that the failure to comply with the Regulations in this case warrants a penalty at the higher end of the scale.

15. In all the circumstances the tribunal considers it fair, proportionate and just to make a payment order for the total sum of £ 365, being 1/2 of the deposit sum, which reflects both the seriousness and duration of the breach and constitutes a meaningful sanction for non-compliance with the Regulations.

**Decision:**

**16. The First-tier Tribunal for Scotland (Housing and Property Chamber) grants an order against the Respondent for payment to the Applicants of the sum of £365 in terms of Regulation 10 (a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011**

**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.

**Petra Hennig-McFatridge**

**Petra Hennig McFatridge**  
**Legal Member/Chair**

**29 April 2021**  
**Date**