



**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/21/1023

Re: Property at 61/1 Lothian Road, Edinburgh, EH1 2DJ (“the Property”)

Parties:

Miss Rebecca Morrison, 21/8 Stead's Place, Edinburgh, EH6 5DY (“the Applicant”)

Ms Sheila Laing, 16 Flat 1, Comely Bank, Edinburgh, EH4 1AL (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for payment of the undernoted sum to the Applicant:

Sum of ONE HUNDRED AND FIFTY POUNDS (£150) STERLING

- Background
- 1. An application was submitted to the Tribunal under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. Said application sought an order be made against the Respondent on the basis that the Respondent had failed to comply with her duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).

- The Case Management Discussion
2. A Case Management Discussion took place on 15 June 2021 by way of teleconference. The Applicant was personally present and representing herself. The Respondent was personally present and represented by her son, Keith Laing.
 3. The Applicant sought an order from the Tribunal on the basis that the Respondent had failed to comply with their duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the 2011 Regulations.
 4. The Applicant submitted that she had entered into a private residential tenancy with the Respondent which commenced 1 November 2021. A copy of the private residential tenancy agreement was lodged with the application. The Applicant paid a £500 deposit to the Respondent prior to the start of the tenancy. The Applicant vacated the property on 31 January 2021. The Applicant contacted the Respondent's daughter-in-law ("Lorraine") who had been managing the property on behalf of the landlord, for return of her deposit on 1 February 2021. A copy of the email correspondence was lodged with the application. Lorraine replied on the same date advising that *"the usual procedure is that you broke the terms of your lease you would not get your deposit back. The deposit is taken to protect the landlord in the event the tenant moves out earlier than the lease states and also does not find another tenant so we expect you to appreciate the terms of your lease."* The Applicant thereafter challenged Lorraine on this and requested evidence of the lodging of the deposit in a tenancy deposit scheme. On 5 February 2021 Lorraine confirmed that the deposit would be returned. The deposit was returned to the applicant in full on 18 February 2021. The Applicant suffered stress and anxiety as she thought she may not get her deposit back. She sought an Order from the Tribunal in the sum of £500.
 5. The Respondent's son submitted that the landlord is 83 years old and deaf. He and his partner Lorraine assist his mother with managing the property. The failure to lodge the deposit was simply an oversight and in no way intentional. She was shielding due to Covid at the time of the start of the tenancy, and unable to get out of her house easily. There had been snow around the time that the deposit had been requested to be repaid to the tenant and this made it difficult for her to attend at the bank. She cannot do online banking herself and needs assistance. Mr Laing submitted that the Applicant had broken the terms of her lease by giving notice so early and this was why the refusal to repay had been made by Lorraine in the first instance. The Tribunal pointed out that the lease lodged with the application was opened ended, had no contractual period and the tenant was free to give notice at any point after taking entry. Mr Laing acknowledged that the new Private Residential Tenancy does not operate in the same way as the short assured tenancies previously issued to tenants. Mr Laing submitted that there were three other tenants in the flat who had each paid deposits separately and these had all been lodged in a tenancy deposit scheme. His mother had been renting out the flat since 1983 with no issues. Lorraine normally assists his mother with the lodging

of deposits. Due to the circumstances at the time, this was an unfortunate oversight. The applicant had left the tenancy earlier than expected.

- Findings in Fact

6. The Tribunal made the following findings in fact:

- (a) The parties entered into a private residential tenancy which commenced 1 November 2020;
- (b) The Applicant paid a deposit of £500 to the Respondent;
- (c) The Respondent failed to lodge the deposit of £500 into an approved tenancy deposit scheme under Regulation 3 of the 2011 Regulations;
- (d) The Respondent failed to provide the statutory information to the Applicant under Regulation 42 of the Regulations;
- (e) The Tenancy ended on 31 January 2021;
- (f) The Deposit was returned to the Applicant on 18 February 2021 in full.

- Findings in Law

7. The Tribunal made the following findings in law:

7.1 The Respondent was in breach of their duties under Regulation 3 of the 2011 Regulations, which states 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.

7.2 The Respondent was in breach of their duties under Regulation 42 of the 2011 Regulations, which states as follows:

42.—*(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).*

(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.

(3) The information in paragraph (2) must be provided—

(a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or

(b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.

7.3 The Tribunal must grant an order in terms of Regulation 10 which states as follows:

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.

- **Reasons for Decision**

8. The Tribunal was satisfied that the Respondent was in breach of their duties under Regulations 3 and 42 as aforesaid. This was by the Respondent's own admission.
9. The 2011 Regulations were introduced to provide security for tenants in paying over deposits to landlords and to address an issue with some landlords taking tenancy deposits and then failing to pay them back where they were lawfully due at the end of the tenancy. The 2011 Regulations also provide that parties have access to an independent and impartial dispute resolution mechanism within a scheme to address any deposit deductions which require to be considered.
10. By the landlord's failure to lodge the deposit into an approved tenancy deposit scheme, the deposit was not protected for a period of 67 days. Despite an initial refusal to return the deposit when requested, this was returned in full on 18 February 2021. It was clear that there appeared to be a fundamental misunderstanding on the part of the landlord (and their representative) as to the terms of the tenancy agreement and the tenant's right to give notice to leave at any point after the start of the tenancy. This was unfortunate, and it is imperative that any landlord leasing property in the private sector ensure that they have a good understanding of the terms of the lease they have entered into, of their legal obligations under same and of their tenant's rights under same. Whilst the Tribunal did consider that 18 days was an unreasonable length of time to take to return the deposit to the tenant, the Tribunal took into consideration the explanation given by the landlord's representative in relation to the age of the landlord and her difficulties in attending at a bank due to shielding/bad weather.
11. The Tribunal did not consider that the breach by the landlord was sufficiently serious to warrant granting an award at the higher end of the scale. The deposit had been returned in full prior to the application being raised. However, the Tribunal was concerned at the lack of awareness by the landlord and her agent regarding the terms of the tenancy agreement in place, and the initial refusal to return the deposit when requested. The Tribunal did consider that this was likely to cause distress to the tenant, which could have been avoided had the landlord adhered to her obligations to lodge the deposit in a scheme in the first place.

- Decision

12. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent(s) for payment to the Applicant in the undernoted sum:

ONE HUNDRED AND FIFTY POUNDS (£150) 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.

Fiona Watson

Legal Member/Chair

Date: 15 June 2021