Housing and Property Chamber
First-tier Tribunal for Scotland

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/21/1907**

**Re: Property at 75 Maberly Street, Flat 24, Aberdeen, AB25 1NL ("the Property")**

**Parties:**

**Miss Eilidh Keay, c/o Gordon Maloney, 108/13 Great Junction Street, Aberdeen, EH6 5LD ("the Applicant")**

**Mr Roshan Jaypalan, 79 Park Lane, Norwich, NR2 3EQ ("the Respondent")**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

## Decision

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

## Background

This was an application dated 3rd August 2021 brought in terms of Rule 103 (Application for order for payment where landlord has not paid the deposit into an approved scheme) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended. The application was made under Regulation 9 of the *Tenancy Deposit Schemes (Scotland) Regulations 2011* ("the 2011 Regulations").

The Applicant sought payment of compensation in respect of an alleged failure by the Respondent to pay the deposit the Applicant provided of £750.00 in relation to the tenancy into an approved scheme within 30 days of receipt of that sum.

The Applicant provided with her application copies of a tenancy agreement and various supporting documentation.

The Respondent helpfully e-mailed his written response to the Tribunal in advance of the Case Management Discussion.

**The Case Management Discussion**

A Case Management Discussion was held on 1st December 2021 by Tele-Conference. The Applicant participated, and was represented by Mr Maloney, of Living Rent. The Respondent participated, and was not represented.

The Applicant was co-tenant with Kirsty Smith, who was not a party to this application, but who had previously confirmed to the Tribunal that she authorised the Applicant to bring this application on her behalf. The tenancy commenced on 31st July 2020 and ended on 9th June 2021.

The Respondent referred to his written explanation previously submitted to the Tribunal in which he fully accepted that he had failed to lodge the deposit, and that he was accordingly in breach of the 2011 Regulations.

The Tribunal will not repeat in detail the content of that submission, in which the Respondent confirmed that due to the stresses caused both by the covid pandemic in his work as a helicopter pilot, and by the loss of one of his close relatives to that disease in his personal life, he had overlooked lodging the deposit as he knew he needed to do, and apologised for his omission to lodge the deposit in an approved scheme.

The Respondent explained that he rented out a number properties, and was fully aware of his obligations with regard to lodging deposits. He had not previously, nor since, omitted to lodge a deposit in an approved scheme. The Respondent confirmed that he had been letting out properties since 2006, and that this was the first and only time that he had faced a claim in relation to a breach of the 2011 Regulations. He was apologetic for his oversight.

The Respondent explained that he used a letting agent in respect of his properties, but only as a tenant finding service, and that he managed his properties himself. The letting agent had apparently erroneously got involved in the checkout process, and advised that certain deductions should be made from the deposit at the end of the tenancy. When he was made aware of these by the Applicant, he took the view that the deductions were not reasonable, and that the Applicant had been a good tenant. As a result, he removed the deductions and returned the whole deposit promptly.

In response, the Applicant substantially accepted the factual narration of events, but took a different view of their seriousness and the Respondent's culpability. Mr Maloney pointed out that the Applicant had been caused substantial stress by the attempt to retain part of the deposit, which she needed in order to secure another tenancy. That attempt had now been accepted by the Respondent to be unreasonable. The Respondent, as an experienced landlord over many years, and who rented out a number of properties, should have been well aware of his responsibilities, particularly where he had chosen to manage the property himself.

Mr Maloney also pointed out that the Respondent had confirmed to the Tribunal that he had moved from his previous address to his new address in January 2020. However, the tenancy agreement of July 2020 gave his previous address despite the fact he had not lived there for over 6 months. Further, until this application was brought, the Applicant's entry on the register of landlords still gave his previous address, and was only recently updated to his current address some 18 months after he moved. This showed that the Respondent was not treating his responsibilities as a landlord with the importance and care that he should.

The Respondent accepted that he had not changed his address on the register of landlords to update it when he moved address, as he should have. This was another oversight on his part, and one for which he again apologised. He noted that the lease agreement was prepared by his letting agent, who had also signed it on his behalf, and that he had brought to their attention the fact that his address as stated in the agreement was incorrect.

Mr Maloney argued that this was a serious breach of the regulations which merited an award of compensation of three times the value of the deposit. The Respondent argued that he was a good landlord, who had made a mistake on this occasion which he had quickly corrected, and that an award of perhaps £200.00 might be appropriate.

**Reasons for Decision**

This application was brought timeously in terms of regulation 9(2) of the 2011 Regulations.

Regulation 3 of the 2011 Regulations (which came into force on 7th March 2011) provides as follows:

> "(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."

The Respondent as landlord was required to pay the deposit into an approved scheme. He accepted that he failed to do so.

Regulation 10 of the 2011 Regulations provides as follows:

> "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."

The Tribunal was satisfied that the Respondent did not comply with his duty under regulation 3, and accordingly it must order the Respondent to pay the Applicant an amount not exceeding three times the amount of the tenancy deposit.

In the case of *Jenson v Fappiano* 2015 G.W.D 4-89, Sheriff Welsh opined in relation to regulation 10 of the 2011 Regulations that there had to be a judicial assay of the nature of the non-compliance in the circumstances of the case and a value attached thereto which sounded in sanction, and that there should be a fair, proportionate and just sanction in the circumstances of the case. With that assessment the Tribunal respectfully agrees.

In the case of *Tenzin v Russell* 2015 Hous. L. R. 11, an Extra Division of the Inner House of the Court of Session confirmed that the amount of any award in respect of regulation 10(a) of the 2011 Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.

In determining what a fair, proportionate and just sanction in the circumstances of this application should be, the Tribunal took account of the facts that the Respondent had not previously breached the 2011 Regulations, that his breach was caused by an unfortunate and unusual set of circumstances, that he had swiftly arranged for the return of the deposit to the tenants and removed the charges suggested by his letting agent, that he accepted at the first opportunity before the Tribunal that he was at fault and had contravened Regulation 3 of the 2011 Regulations, and from the outset gave a candid explanation of what had happened to both the Applicant and the Tribunal and offered a sincere apology for the inconvenience caused. The foregoing factors did represent mitigation in respect of the compensation to be awarded in the exercise of the Tribunal's judicial discretion.

However, balanced against these mitigating factors, was the fact that the Respondent received payment of the deposit in July 2020 and did not comply with his legal obligations as a landlord with respect to the 2011 Regulations, which regulations have been enacted to provide protection to tenants in respect of their deposit and ensure that they can obtain repayment of their deposit at the conclusion of the lease, and the fact that the period during which the deposit was not lodged in an approved scheme and during which the Applicant did not have the security provided by such lodging was for the duration of the lease (approximately eleven months). The Tribunal also noted that the lease agreement did not give the Respondent's correct address at the time it was granted, and that his entry on the register of landlords also did not state his correct address for a period of approximately 18 months, both of which indicated an element of lack of care on his part in relation to his responsibilities as landlord.

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Balancing these various competing factors in an effort to determine a fair, proportionate and just sanction in the circumstances of this application, the Tribunal considered that the sum of £1,125.00 (one and a half times the amount of the tenancy deposit) was an appropriate sanction to impose.

**Decision**

For the foregoing reasons, the Tribunal ordered the Respondent in respect of his breach of Regulation 3 of the 2011 Regulations to make payment to the Applicant of the sum of £1,125.00 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.**

**01/12/2021**

**Legal Member/Chair** **Date**