



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

**Chamber Ref: FTS/HPC/PR/21/2486**

**Re: Property at 22/1 Kilinside Road Paisley, PA1 1RP. (“the Property”)**

**Parties:**

**Mr Luke Glendinning 1/1 58 Bank Street, Paisley PA1 1LN (“the Applicant”)**

**Mrs Jayne Cairns, Flat 2/2 Ferguslie Road Paisley PA1 2QT (“the Respondent”)**

**Tribunal Members:**

**Jan Todd Legal Member**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent did not comply with the duty in Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 to pay the deposit to the scheme administrator of an approved scheme and ordered the Respondent to pay the Applicant the sum of Eight Hundred and Fifty Five Pounds only.**

**BACKGROUND**

1. This was a hearing to consider an application under Rule 103 for an order under Section 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011. (2011 Regulations).
2. The following was lodged along with the application:-
  - A copy of what's app messages between the Respondent and Applicant enquiring where the Deposit was held
  - Copy e-mails from Safe Deposit Scotland. Letting protection Scotland and My Deposit Scotland confirming the deposit was not held by them.
3. The Applicant in his application was seeking compensation for the failure to lodge the deposit. He confirmed however that the deposit of £380 had been returned to him.

4. The Applicant has advised that he sent in a copy of the tenancy agreement with his application but this has not been received and appears to have been lost in transit.
5. A Case Management Discussion was fixed for 2pm on 23<sup>rd</sup> November 2021 and the Tribunal issued a direction to the Respondent asking her to lodge:-
  - a. a copy of the Tenancy Agreement
  - b. Details of her landlord registration and
  - c. Written representations explaining where the deposit was held from the date of payment to the date they were repaid.
6. The Respondent replied advising that her landlord registration had been applied for and that the deposit had never been lodged in a deposit scheme because "when he asked to move into the flat he couldn't afford the deposit and asked if he could pay it over 2 months and quite simply I felt compassion for the young boy who was trying to secure a place of his own." No copy of the tenancy agreement has been lodged.

## **The Discussion**

7. Both the Applicant and the Respondent's representative participated in the Hearing which took place via conference call due to the requirement for social distancing due to the Covid 19 pandemic. Neither party was represented. The legal member explained the purpose and manner of the CMD and confirmed that the purpose of the case management discussion was to consider the application for a penalty in respect of the failure to lodge the tenancy deposit timeously in a tenancy deposit scheme.
8. The parties both agreed the following facts namely that the Applicant and Respondent had entered into a lease of the Property from 11<sup>th</sup> April 2016 until 7<sup>th</sup> September 2021; that the deposit of £380 had been paid to the Respondent as Landlord but not lodged in a tenancy deposit scheme and that the deposit was returned to the Applicant on the day he left the property.
9. The Applicant had lodged a separate application under rule 69 for unlawful eviction from the property claiming that the landlord's behaviour had caused him to leave the property despite the fact he admitted he had assisted her to complete the some notices required to evict a tenant. He advised that he had moved into another property arranged by a housing association. This application was set down to be heard by the Tribunal at the same time as this application but the Applicant indicated he wanted to withdraw it as he now realised he needed a professional valuation although he may wish to apply again at later date.
10. The Tribunal then invited the Applicant to confirm what he was seeking. The Applicant confirmed he was seeking the maximum amount of compensation for the failure to put his deposit in a deposit scheme. He explained that he had paid £550 in cash to the landlord at the start of the tenancy which he advised was £380 for the deposit with the balance due for part of the first month's rent and then he paid up the rest of the first months' rent, by paying £30, £30 and £150 over the next 3 months.

11. The Applicant then advised that it was only in March this year when he got some advice from Shelter that he realised the deposit should have been lodged in a tenancy deposit scheme. He referred to the what's app messages he had lodged with the application and advised that he had queried with the landlord if it was in a scheme and which one and advised she did not rely. The Applicant then explained that on the day he was leaving which was 7<sup>th</sup> September 2021 the landlord came to the flat around 3.30 in the afternoon but and did not agree to hand back the deposit. He advised that they she was resistant to returning it and had thrown a cushion at him as she was frustrated with matters and a treadmill that she had originally asked for but now wanted out of the flat. The Applicant confirmed that the landlord left and he asked her husband to come over which he did. After a few phone calls between Mr Cairns and his wife the landlord, the Applicant advised that he did receive his deposit back and was grateful to Mr Cairns for facilitating that.
12. The Respondent's representative was then asked for his comments and he confirmed the following was agreed:-
  - a. That his wife the Respondent had let out the Property to the Applicant from April 2016 to 7<sup>th</sup> September 2021.
  - b. That the deposit had not been lodged in a deposit scheme
  - c. That the deposit was £380 and had been paid back to the tenant by bank transfer on the day the tenant left namely 7<sup>th</sup> September 2021.
  - d. He also advised the Respondent did not have a copy of the tenancy agreement
13. Mr Cairns advised that although he agreed the Applicant had paid £550 up front at the start of the lease he did not believe that was for the deposit and part of the first month's rent. He believed that was for the first month's rent and part of the deposit only. He agreed the balance had been paid over the next few months and as the landlord had not had it straight away he thought that was why it had not been lodged in a scheme, he said "we viewed it that he never had a deposit". Mr Cairns also confirmed that his wife would have been pregnant around this time and may have overlooked it as it was paid over 2 or 3 months. He confirmed that she had owned the flat for 15 years and had started renting it out around 8 years ago and has used the tenancy deposit scheme. Mr Cairns advised that the Applicant was always going to get his deposit back, although he advised that the landlord was disappointed in the state of the flat and had it been in a deposit scheme she may have had a claim to keep some of it. He further advised that his wife always thought she had a good relationship with the Applicant and had allowed him to pay up the deposit over a few months and also allowed him to have a cat.
14. With regard to the circumstances on the day the tenant left the Property Mr Cairns confirmed that he did go to the flat and everything looked great. His wife was home at this point and he agreed she may have been down at the flat at some point earlier. He confirmed that he got the keys and arranged for the deposit to be transferred to the Applicant. He advised that his wife, the Respondent had been slightly reluctant to arrange the transfer as the flat wasn't what it was and she also struggled with the banking app as she wasn't great with technology but she did pay it that day. She had to pay it he advised because he told her she had to pay it over.
15. Mr Cairns emphasised that the Respondent had enjoyed a good relationship with the tenant.

- **Findings in Fact**

16. The Respondent entered into a lease with the Applicant whereby the Applicant leased the Property from the Respondent from 11<sup>th</sup> April 2016
17. The rent due was £380 per month.
18. The deposit paid by the Applicant to the Respondent was £380. The deposit was paid at the latest within 3 months of the start of the lease.
19. The tenancy ended and the Respondent left on 7<sup>th</sup> September 2021
20. The Deposit was repaid directly to the Applicant on 7<sup>th</sup> September from the Respondent.
21. The Applicant was not at any time given information about where his deposit had been placed.
22. The Deposit was never lodged in a tenancy deposit scheme for the duration of the tenancy.

### **Reasons for Decision**

23. The Tribunal found that the Respondent has failed to comply with the duty set out in Section 3 of the 2011 Regulations by failing to place the deposit in an approved scheme within 30 days of the beginning of the tenancy.
24. That in terms of Section 10 of the 2011 Regulations the Tribunal is obliged to make an order that the landlord pay the tenant an amount not exceeding three times the amount of the tenancy deposit.
25. The parties are not in dispute that the deposit of £380 made by the Applicant to the Respondent was not lodged timeously within the required 30 days and in fact was not lodged at all for nearly 5 years after the tenancy started. The parties agree that the end date of the tenancy was 7<sup>th</sup> September 2021; the Applicant made the application on 12<sup>th</sup> October 2021 therefore this application is competently made.
26. The parties did disagree on when exactly the deposit had been paid, either in full at the start of the tenancy which the Applicant submitted or 3 months later according to the Respondent. Either way the deposit was not lodged for at least 5 years. The difference of 2/3 months is not significant to the penalty to be awarded.
27. The Tribunal has to consider what penalty is appropriate and in doing so has considered the mitigating circumstances the Respondent has put forward, namely that she had overlooked the deposit because she believed it had been paid up over 2/3 months and that she has repaid the deposit in full at the end of the tenancy. The Applicant does agree that some money due at the start of the lease was paid up over a few months and so it is reasonable that the Respondent may have believed this was the deposit.
28. The Tribunal has to weigh that up along with the position that a responsible landlord should know that all deposits require to be lodged in an authorised scheme and should have lodged it no later than 30 days after the full deposit was lodged.
29. The Regulations have been in force since 2011 and the Respondent's representative confirmed that she was aware of the deposit schemes and had used them. The requirement is there so that the Tenant has his deposit

protected and that at the end of the tenancy if there is any dispute both parties can avail themselves of the independent dispute adjudication service offered by the statutory deposit schemes.

30. The Tribunal finds that this was not a deliberate attempt to avoid placing the deposit but more one of it being overlooked however the deposit was unprotected for a very lengthy period of time and the Respondent did not then rectify this when the tenant raised it in March 2021, although she has paid it in full on the day the tenancy ended after some discussion with her husband.
31. Weighing up all these factors the Tribunal considers that an appropriate penalty should be at the higher end of the scale and determines that an amount of two and one quarter of the deposit (2.25 x the deposit) is reasonable and appropriate and therefore awards the sum of £855 to the Applicant.

- **Decision**

The Tribunal awards the sum of Eight Hundred and Fifty Five pounds as a penalty for failure to lodge the deposit in a tenancy deposit scheme within 30 days from the payment of the deposit.

## **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: Jan A Todd**

**Date: 23<sup>rd</sup> November 2021**

