

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

**Chamber Ref: FTS/HPC/PR/21/2554**

**Re: Property at 71 School Road, Sandford, Strathaven, ML10 6BF (“the  
Property”)**

**Parties:**

**Dr Selvarani Selvaraja, 41 Viewmount Crescent, Strathaven, ML10 6NT (“the  
Applicant”)**

**Carlton Country Ltd, Unknown, Unknown (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined to make an order in the sum of One thousand two  
hundred and fifty pounds (£1250) against the Respondent in favour of the  
Applicant**

**Background**

- 1 The Applicant applied to the Tribunal under regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”) seeking an order for payment as a result of the Respondent’s failure to lodge their tenancy deposit with a tenancy deposit scheme. In support of the application the Applicant provided copy tenancy agreement between the parties, evidence of the tenancy end date and copy correspondence.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 1<sup>st</sup> December 2022.

- 3 On 25 November 2021 the Applicant provided further information to the Tribunal by email. In summary, the Applicant advised that there had been an unacceptable delay in the repayment of the tenancy deposit, the Respondent had proposed to deduct sums which were not justified, communication had been poor and the Respondent had received an interest free income for nine months. Her deposit had not been returned in full until the 23 November 2021. The Applicant further advised that she was suffering from cancer and that her neighbours who also leased from the Respondent had not had the same issue. She therefore confirmed that she sought an amount three times the deposit. In support of her representations the Applicant provided additional documentation which consisted of copy correspondence with SafeDeposits Scotland.
- 4 The Tribunal attempted to serve the application paperwork upon the Respondent however this was unsuccessful. The Case Management Discussion was therefore rescheduled to the 28 January 2022. The Respondent was given notification of the date and time of the Case Management Discussion by email dated 23 December 2021 and invited to make representations. On 23 December 2021, Ms Donna Fridley contacted the Tribunal on behalf of the Respondent and requested a copy of the application paperwork which was provided to her.

### **The Case Management Discussion**

- 5 The Case Management Discussion took place on 28 January 2022. The Applicant was present. Ms Fridley appeared on behalf of the Respondent. The Legal Member explained the purpose of the Case Management Discussion. She confirmed with Ms Fridley that the Respondent accepted the deposit had not been placed in a tenancy deposit scheme within the statutory timescales, albeit there was mitigation to put forward on the Respondent's behalf. The Legal Member therefore noted that the question for the Tribunal to determine was the level of sanction that should be awarded, taking into account the circumstances of the breach. This was at the discretion of the Tribunal but both parties were invited to make submissions on what they considered would be appropriate.
- 6 The Applicant advised that she sought the maximum level of sanction, namely three times the deposit. She explained that she had recently moved to the United Kingdom and had not been aware of the tenancy deposit scheme. She assumed the Respondent would have explained this to her, and she considered this to be a breach of trust and immoral. She did not know where her tenancy was at the end of the tenancy and questioned where the money had been held up until that point. She explained that she was a cancer patient and was still receiving chemotherapy. It had been challenging for her to manage her cash flow in the midst of a lot of uncertainty. At the end of the tenancy she had needed the deposit in order to pay a deposit for her next property and the Respondent had taken a significant amount of time to get back to her. This had taken a toll on both her mental and physical health.
- 7 The Applicant advised that her neighbours leased property from the same landlord but had not had a similar issue with their deposits, which had been

placed in the scheme. She was flabbergasted by this. She was of the view that the Respondent had taken advantage of her ignorance, as a foreign national. Her neighbours had received their deposits timeously after moving out, however she had not. The Applicant confirmed that the deposit had been repaid to her in full in November 2021. The tenancy had ended on 5 September 2021.

- 8 Ms Fridley addressed the Tribunal on behalf of the Respondent. She stressed that there had been no intention to take advantage of the Applicant and she apologised if the Applicant felt that was the case. Ms Fridley explained that the Respondent had used an agent (the Property Store) to carry out the tenancy procedures, arrange the tenancy agreement and collect rent and deposit. At the time the Applicant signed her tenancy, the deposit money was collected by the agent. The Respondent had no record of the deposit having been paid to them and presumed it had been paid into a scheme by the agent. There had been some confusion, as sometimes the agent had placed deposits in the scheme, other times it had been up to the Respondent to do it. When the Applicant asked about her deposit, the Respondent had carried out internal investigations and discovered the deposit had been paid the wrong bank account. The deposit was then paid into the deposit scheme immediately. Ms Fridley advised that at no time was the Applicant's deposit in jeopardy, the money was always there. There was no intention of withholding the money. The Respondent had believed that they had gone through the proper process. Ms Fridley noted that the Respondent had sought deductions from the deposit but had put these through the SafeDeposits Scotland dispute process and the deposit had ultimately been returned to the Applicant.
- 9 In terms of the level of sanction, Ms Fridley thought three times the deposit would be unfair, although she understood the law required some form of penalty. She didn't think the circumstances justified that amount. The money had been kept safe. In response to questions from the Legal Member Ms Fridley confirmed that the Respondent owned 12 properties, but had sold 9 of them. Two further sales were pending. She confirmed that all other tenancy deposits had been placed in the deposit scheme. Once they had discovered the error with the Applicant's deposit, the Respondent had made sure that all deposits were secured in the scheme.
- 10 The Applicant was given the opportunity to make any further comment. She questioned the timing of the lodging of the deposit with the scheme. She advised that her husband had spoken to the Respondent on the 21<sup>st</sup> September asking if the deposit had been placed into the scheme, and the Respondent had confirmed it had, however the scheme website said otherwise. The next day they checked again and the deposit had been lodged with the scheme. The Applicant pointed out that all other properties were let through the agent, however only she had an issue with her deposit. It didn't add up. She felt the agent was being used as a scapegoat.
- 11 Ms Fridley was given an opportunity to make any further comment. She advised that the Applicant was going on the basis of comment from other tenants. The agent had in the past taken deposits and paid them into a safe deposit scheme. However at the time, there was a transition whereby the Respondent was taking

back the management of some of them due to the fact that they were selling them. Ms Fridley apologised again and stressed that the Respondent would not do business in the manner suggested by the Applicant. At the time the Applicant gave notice, they had carried out internal investigations and noted the error with the deposit. It had taken time for the deposit to register and show on the scheme's website. She wanted to assure the Applicant that the Respondent had not intentionally done anything wrong. She was very sorry and wouldn't wish this to happen to anyone, nor did she wish for anyone to feel they had been taken advantage of.

- 12 The Case Management Discussion concluded and the Legal Member advised that she would issue the decision in writing.

### Relevant Legislation

- 13 The relevant legislation is contained within the Tenancy Deposit Scheme (Scotland) Regulations 2011 which provide 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.”*

*“9.—(1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.*

*(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.”*

*“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.”*

## **Findings in Fact and Law**

- 14 The Applicant and Respondent entered into a tenancy agreement in respect of the property which commenced on 5 January 2021.
- 15 The said Tenancy Agreement provides for a deposit of £2,500 to be paid by the Applicant to the Respondent.
- 16 The Applicant paid the deposit of £2500 to the Property Store, an agent acting on behalf of the Respondent, at the start of the tenancy.
- 17 On 4 August 2021 the Applicant gave notice to terminate the tenancy.
- 18 The tenancy between the parties terminated on 5 September 2021.
- 19 The deposit was registered with SafeDeposits Scotland on 24 September 2021.
- 20 The deposit was returned to the Applicant in full on 23 November 2021.
- 21 The Respondent is in breach of Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 by virtue of their failure to lodge the deposit within an approved tenancy deposit scheme and provide the Applicants with the prescribed information within thirty working days of the commencement of the tenancy.

## **Reasons for Decision**

- 22 The Tribunal determined the application having regard to the application paperwork, the written representations and the submissions heard at the Case Management Discussion. The Tribunal considered it had sufficient information upon which to make a proper determination of the application.
- 23 The failure to comply with Regulation 3 was admitted by the Respondent in this case, and therefore Regulation 10 was engaged. On that basis the Tribunal had to consider what level of sanction would be appropriate having regard to the

particular circumstances surrounding the breach. The Tribunal did not identify this to be an issue that required a hearing to be fixed on the basis that it was a matter of judicial discretion and the substantive facts of the case were agreed.

- 24 The Tribunal considered the requirement to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach. In doing so the Tribunal took into account the fact that the deposit had remained unprotected for the entire term of the tenancy, it being a matter of agreement that the Respondent had not paid the deposit into an approved deposit scheme until after the tenancy had terminated.
- 25 The Tribunal did not however consider this breach on the Respondent's part to be deliberate and found the submissions from Ms Fridley to be credible in that respect. The Tribunal accepted that this was not a systemic issue, having noted that the Respondent had lodged tenancy deposits with the scheme for the other properties they leased, which indicated an awareness of their obligations under the 2011 Regulations. Similarly the Tribunal did not accept that there had been any intention to treat the Applicant any differently due to their status as a foreign national. It appeared that the failure to lodge the deposit was essentially an erroneous oversight on the Respondent's part. Upon discovering the error with the Applicant's deposit, they had taken steps to lodge the deposit with the scheme to ensure the proper process could be followed in respect of the return of the deposit. The Tribunal further noted that the Applicant had ultimately received her deposit in full and had therefore not suffered any prejudice in that respect, having had the benefit of the independent dispute resolution process the deposit scheme provided.
- 26 The Tribunal could not however ignore the purpose of the 2011 Regulations, namely to penalise landlords to ensure they comply with the duty to protect and safeguard tenancy deposits. It was clear that there had been an unreasonable delay in the return of the deposit to the Applicant, as a result of the late lodging of the funds after the tenancy had ended. The Tribunal had sympathy with the Applicant's position and accepted that this would have been a cause of stress, particularly if the funds were required in order to secure a new tenancy. The initial uncertainty of not knowing where her deposit was, and whether it was secure, would also have been a source of concern.
- 27 The provisions of Regulation 10 do leave the Tribunal with no discretion where a landlord is found to have failed to comply and permit an award of up to three times the deposit. In this case, the Tribunal did not consider an award at the higher end of the scale was warranted, particularly as the breach arose from an unintentional error on the Respondent's part, not deliberate malicious intent; this was clearly not a systemic issue; and the deposit had ultimately been returned to the Applicant in full. However, the Tribunal had to take into account the impact on the Applicant caused by the delay in the return of the deposit. Therefore, balancing the competing factors in the particular facts and circumstances of this case, the Tribunal considered therefore that a sanction in the sum of £1250 would be appropriate, being a sum equivalent to half the deposit.

28 The Tribunal therefore made an order against the Respondent in the sum of £1250.

### **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: Ruth O'Hare**

**Date: 28<sup>th</sup> January 2022**