



**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/21/2783**

**Re: Property at 27 Strathmore Avenue, Coupar Angus, Blairgowrie, PH13 9ED  
("the Property")**

**Parties:**

**Miss Melissa Roy, 1C Turriff Place, Dundee, DD3 8RQ ("the Applicant")**

**Ms Cheryl Ramsay, 27 Strathmore Avenue, Coupar Angus, Blairgowrie, PH13  
9ED ("the Respondent")**

**Tribunal Members:**

**Valerie Bremner (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent should pay to the Applicant the sum of £900 having found that the Respondent had breached the duties set out in Regulation three of the Tenancy Deposit Schemes(Scotland) regulations 2011.**

**Background**

1.This is an application under Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations and Rule 103 of the tribunal rules of procedure in respect of an alleged failure to comply with the duties required of a landlord under Regulation 3 of the 2011 regulations.

2. The application was first lodged with the Tribunal on 10 November 2021 and was accepted by the Tribunal on 12 November 2021. A case management discussion was set down for 15 December 2021 at 2 pm.

**Case Management Discussion**

3. The Applicant was not present but was represented at the case management discussion by Miss Lee of MML Legal and the Respondent, who was also not present, was represented by Ms McNicol of Macnabs solicitors.

4. The tribunal had sight of the application, a tenancy agreement, a text message, and representations made on behalf of the Respondent which included a letter and a screenshot from a tenancy deposit scheme provider website.

5. At the outset of the case management discussion on behalf of the Respondent Ms McNicol accepted there had been a breach of the duties imposed under Regulation 3 of the 2011 Regulations.

6. Miss Lee addressed the Tribunal on behalf of the Applicant. She explained that the parties had entered into a tenancy agreement with effect from 1 August 2020 and a deposit in the sum of £1190 had been paid by the Applicant. The tenancy had ended on 14 August 2021. The Applicant had made enquiries with the approved schemes to check where her deposit was and found it had not been protected. She then enquired with the Respondent regarding the deposit. As well as the deposit not having been protected the Applicant had not received the information required to be sent her in terms of Regulation 3 by the landlord.

7. On behalf of the Respondent Ms McNicol indicated that the tribunal process was causing some anxiety for the Respondent. She wanted to draw a line under the matter. In the course of discussions with the Applicant around the ending of the tenancy the Respondent had been asked to pay the deposit direct to the Applicant rather than putting it into a tenancy deposit scheme, albeit very late. The Applicant's deposit had been retained by the Respondent, albeit not in a scheme, but the Respondent had required to withhold some of the deposit in relation to cleaning, clearance and repair costs which she said she had incurred after the Applicant vacated the property. After deduction of these costs the balance of the deposit had been returned to the Applicant.

8. The Respondent she said had been trying to sell the property and had been unable to do that and so had rented it out to the Applicant. She was an amateur landlord who had never let property previously. She had required to move to England at short notice. She is a single parent. She made no profit from the arrangement and it was Ms McNicol's contention that the deductions from the deposit would likely not cover the amount of money that the Respondent would have to spend to restore the property to the condition it had been in before the property was leased to the Applicant.

9. Ms McNicol also advised that the Respondent had required to enter into a debt arrangement scheme. She had made an offer to the Applicant to settle matters and had offered £150 but this offer not been taken up. Miss McNicol explained that the sanction would have a further lasting effect on the Respondent's circumstances and housing position. She described the Tribunal application regarding the breach of duty on the part of the Respondent as being a salutary lesson to her.

10. It was further explained on behalf of the Respondent that she had, on receipt of the deposit, registered with a tenancy deposit scheme but lost the login details. She had made a number of unsuccessful attempts to retrieve those details and instead registered with another tenancy deposit scheme. Before she could pay the deposit into that scheme her laptop was damaged by her son and she could not remember her registration details or access them via her laptop. Thereafter perhaps due to a number of things going on in her life she had failed to adhere to her obligations although she was aware of them. Ms McNicol said that this was not a wilful disregard of the Regulations.

11. On behalf of the Applicant it was accepted that the Applicant's boyfriend had requested that the deposit be returned directly to the Applicant towards the end of the tenancy. The Applicant disputed the deductions made to the deposit and it was suggested by Miss Lee that the failure to pay the deposit into a scheme had denied the Applicant the opportunity to use the tenancy deposit mediation scheme in respect of the return of the deposit.

12. Miss Lee was seeking the maximum sanction available which was £3750 and was seeking the maximum on the basis of the Respondent's failure to comply with the Regulations. The original application had requested expenses but Miss Lee confirmed that she was not making a motion for expenses in relation to the application.

13. The Tribunal was satisfied had sufficient information upon which to make a decision and that the proceedings had been fair.

14. The Tribunal found that the Respondent had breached the terms of Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations in that the tenancy deposit had not been paid into an approved scheme within the required timescale and the information required to be given to tenants in terms of Regulations 3 and 42 of the 2011 Regulations had not been provided to the Applicant.

## **Findings in Fact**

15. The parties entered into a tenancy agreement at the property commencing 1 August 2020.

16. The tenancy agreement came to an end with effect from 14 August 2021.

17. The tenancy was a relevant tenancy within the meaning of Regulation 3 of the 2011 regulations.

18. The Applicant paid a deposit of £1190 to the Respondent at or around the start of the tenancy.

19. The Respondent registered with a tenancy deposit scheme but lost the log in details for that scheme.

20. The Respondent registered with another tenancy deposit scheme but her laptop was damaged by her son and she could not remember her registration details or access them from her laptop.

21. The deposit paid by the Applicant to the Respondent was not paid into an approved tenancy deposit scheme at any time during the tenancy.

22. In discussion with the Applicant as regards the ending of the tenancy the Respondent offered to pay the deposit into an approved tenancy deposit scheme.

23. The Applicant through her boyfriend requested that the deposit be returned directly to the Applicant by the Respondent rather than paid into a tenancy deposit scheme at that stage.

24. Part of the Applicant's deposit was returned by the Respondent who made deductions from the deposit in relation to clearance, repairs and cleaning which she felt were required to be carried out at the property to restore it to the condition it had been in prior to the applicant renting it.

25. The Respondent is a single parent who has recently entered into a debt arrangement scheme.

26. The information required to be given to the Applicant in terms of Regulations 3 and 42 of the 2011 Regulations was not given to the Applicant by the Respondent at any stage of the tenancy.

### **Reasons for Decision**

27. The Tribunal having found that there was a breach of the Regulations, it then fell to the Tribunal to consider what sanction should be made in respect of the failure to protect the deposit and give the information required in terms of Regulation 3 of the 2011 Regulations within the required timeframe. The Tribunal had regard to the case of ***Russell - Smith and others against Uchegbu [2016]SC EDIN 64***. In particular the Tribunal considered what was a fair proportionate and just sanction in the circumstances of the case always having regard to the purpose of the regulations and the gravity of the breach. Each case will depend on its own facts and in the end of the day the exercise by the tribunal of its judicial discretion as a balancing exercise,

28. The Tribunal weighed up all the factors and found it to be of significance that the deposit had been unprotected for the entire period of the tenancy after the expiry of the timescale for protecting it as set out in the Regulations, and the required information had not been given at any stage. However the Tribunal took account of the fact that albeit very late into the tenancy, the Respondent had offered to pay the deposit into a scheme but at the request of the Applicant via her boyfriend had returned part of the deposit directly to her after deduction of certain costs which she said she had incurred at the property at the end of the tenancy. The Respondent should have protected the deposit in an approved scheme and provided the required information within the required timescales and certainly when the failure was drawn to her attention by the Applicant, but the Tribunal was advised that the part deposit was returned direct to the Applicant in good faith and this was not challenged. The Tribunal also took account of the fact that the Respondent had admitted the breach of duty in advance of the case management discussion. The Tribunal also considered and accepted that the Respondent was an “amateur” first time landlord who had set up an account with two tenancy deposit protection schemes but when she lost access to these appeared to let matters drift and did not comply with her duties. This of course meant that the failure to comply with the duties on a landlord had not come about because the Applicant was unaware of the duties. The Tribunal accepted that the failure had not been a wilful act but rather an inadvertent failure to comply with the Regulations by someone who was now in difficult financial circumstances from the information placed before the Tribunal.

29. The Tribunal found that the breach of the regulations having occurred in the circumstances set out by the Respondent’s representative this was not a matter which required the maximum sanction to be imposed but given the mitigating factors set out by the Respondent’s representative the tribunal determined that the sanction should be £900, a sum less than the deposit paid, in the particular facts and circumstances of the case.

### **Decision**

30. The Tribunal determined that the Respondent should pay to the Applicant the sum of £900 in total having found that the Respondent breached the duties set out in Regulation 3 of the Tenancy Deposits (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.**



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**Legal Member/Chair**

**15.12.21**  
**Date**