

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

Chamber Ref: FTS/HPC/PR/21/2836

**Re: Property at Flat 1, 8 Western Harbour Midway, Edinburgh, EH6 6PT (“the
Property”)**

Parties:

**Mr Kyle Crawford, Ms Kaden Stewart, 26 Sorn Green, Glenrothes, Fife, KY7 4SF
 (“the Applicants”)**

**Mr Sean Greenhorn, Mrs Morag Greenhorn, Mrs Margaret Greenhorn, Mr John
Greenhorn, 20 Spearhill Road, Tayport, Fife, DD6 9HT (“the Respondents”)**

Tribunal Members:

Ms H Forbes (Legal Member) and Mr A Khan (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Respondents did not breach Regulation 3 of the
Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”)
and no order for payment was made.**

Background

1. This is an application made in terms of Rule 103 and received in the period between 16th and 26th November 2021. The Applicants are seeking an order for payment in the sum of £2500 in respect of the Respondent’s alleged failure to provide the information required by Regulation 42. The Applicants lodged a copy of the tenancy agreement between the parties which commenced on 10th January and ended on 15th October 2021, and email correspondence from the Applicant’s letting agent and representative, Rettie & Co. Ltd (“Rettie”).
2. By email dated 20th January 2022, the Respondents’ representative lodged written representations and productions.
3. A Case Management Discussion (“CMD”) took place by telephone conference on 2nd February 2022. The case was continued to a hearing on whether the

information required by Regulation 42 had been provided and, if not, what level of payment should be awarded to the Applicants.

4. Both parties lodged further documentation in advance of the hearing. Documents were combined into the following:

A – 76 page document for the Applicants
B – 36 page document for the Respondents
C – 120 page document for the Respondents

The Hearing

5. A hearing took place by telephone conference on 27th May 2022. The Applicants were in attendance. The Respondents were not in attendance and were represented by Ms Victoria Sanderson, Rettie.

Preliminary Matters

6. The Tribunal addressed the matter of late documents lodged by the Applicants on 25th May 2022. There was no opposition to the documents on behalf of the Respondents. The Tribunal allowed the documents to be received late.

The Applicants' position

7. It was the Applicants' position that they did not receive the Regulation 42 certificate. They did not dispute that Rettie may have sent the certificate, and did not dispute the veracity of the email and certificate lodged by Rettie, which was sent at 14.49 on 19th January 2021 (B33) from Kim Collins of Rettie to the Applicant, Ms Stewart. Ms Stewart was the lead tenant, and it had been agreed that documentation would be sent to her. The Applicants' concern was that Rettie does not have a read receipt system, so there was no evidence that it had been received. They would expect a system similar to the system in the bank where they had both worked, to ensure that any important legal document was received. They paid over £11,000 in rent throughout the tenancy, and felt they deserved a better service with a failsafe system to ensure receipt of important legal documents. The Applicants referred to the tenancy agreement being sent by email and having to be signed, which would flag up any issue if it was not received. This did not happen with the Regulation 42 certificate. The Applicants accepted that the tenancy agreement set out where the tenancy deposit was held, but made the point that the agreement was drawn up before the tenancy commenced, and the information could have changed thereafter.
8. The Applicants were concerned that more vulnerable tenants would have had more difficulties than they had in dealing with these matters. It was only at the end of the tenancy when they had to turn their mind to matters in relation to

the tenancy deposit that they realised they had not received the section 42 certificate or the tenancy deposit certificate. They ought also to have received an inventory, and they did not receive this until the end of the tenancy. The Applicants said they had to chase up Rettie to get their tenancy deposit ID (A76), as this had not been provided at the start of the tenancy, when it should have been provided. It was referred to in the vacating instructions (A17). There had been a period of a month from October to November 2021 when no emails were answered by Rettie, and this indicated a lack of care by Rettie.

9. Responding to questions from the Tribunal regarding the fact that they appeared not to have received an email from the tenancy deposit scheme (“LPS”) as well as Rettie, the Applicants said they were using an internationally recognised email platform, Gmail, and were not aware of any issues with the platform that would have led to them not receiving emails at that time. They were using their emails on a daily basis and had not had issues with any other emails.

The Respondents’ position

10. Ms Sanderson said Rettie does not use read receipts and this is not required by the industry or the Letting Agent Code of Practice, however, they will be looking into this going forward. They have now changed their processes to ensure all tenants are sent all documentation. The Regulation 42 certificate does not include log-in details. The welcome letter provided to tenants (C20), tells the tenants where the deposit will be held and what to do if they do not receive various information including the Regulation 42 certificate. The tenancy agreement also states where the deposit will be held. At the end of the tenancy, the Applicants were provided with vacating instructions (B36), and these gave the phone number and web address for LPS. The vacating instructions had been sent to the lead tenant on 10th September 2021 and she did not inform Rettie of any issues at that stage. Rettie had missed some emails from Mr Crawford and this matter had not been resolved.
11. Ms Sanderson referred to the email header information lodged on behalf of the Respondent (B36). This is the information provided by Rettie’s email system. The first highlighted section showed that the system had authorised Ms Stewart’s Gmail address, and the email had left Rettie’s system. The second highlighted section showed that the automatic signature had been added. This only happens when the email is in transit and proves the email has left their account. Ms Sanderson said it was not only emails from LPS and Rettie that were not received by the Applicants. There was also an email from Pinstripe with the inventory, that was not received until it was requested again at the end of the tenancy.
12. Responding to questions from the Tribunal, Ms Sanderson said this issue had not arisen with any other tenants. This was the first time they were aware of it.

13. Ms Sanderson made the point that vulnerable tenants can ask for hard copies of documents instead of email.

Amount of payment

14. The Applicants confirmed they were requesting two times the tenancy deposit, a total of £2500. The matter had weighed upon them for a long time, and had taken a long time to resolve.

15. Ms Sanderson said Rettie had not failed in their obligation. They provided the necessary information and no penalty was warranted.

Findings in Fact and Law

- 16.
- (i) The Tenancy commenced on 10th January and ended on 15th October 2021.
 - (ii) Rettie acted as agent for the Respondents throughout the tenancy.
 - (iii) A tenancy deposit in the sum of £1250 was paid by the Applicants at the start of the tenancy.
 - (iv) The tenancy deposit was lodged with LPS approved tenancy deposit scheme on 19th January 2021.
 - (v) On 19th January 2021 a Regulation 42 certificate was sent by email from Rettie to the Applicant, Ms Stewart.
 - (vi) On 20th January 2021, a tenancy deposit certificate was sent by email from LPS to the Applicant, Ms Stewart.
 - (vii) The Respondents complied with Regulation 3 by providing the information required in Regulation 42.

Reasons for Decision

17. The Tribunal noted that, contrary to the Applicants' position at the CMD, there was no disagreement at the hearing over the fact that Rettie sent the email on 19th January 2021 with the attached Regulation 42 certificate. The issue was whether the Applicant, Ms Stewart, received it. The Applicants' position was that there ought to be a failsafe system in place to make sure documents are received.

18. In terms of Regulation 42, the Respondents were required to provide the tenant with certain information. The information was provided by the landlords'

agent, Rettie, to the email address provided by the Applicants. The Regulations do not require a landlord to ensure that the information has been received. While this may be good practice, the Tribunal considered there is no legal obligation on the landlord to carry out a further check to ensure the document is received.

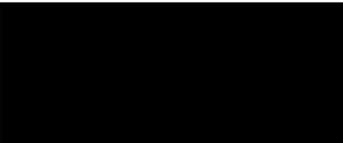
19. The Tribunal noted that Rettie had informed the Applicants in writing that they should expect the Regulation 42 certificate within a certain time period, and it would have been open to the Applicants to have contacted Rettie at that time to request the certificate, if they were concerned it had not been received. There was no reason Rettie should have been concerned about information not being received at the email address provided, particularly when the Applicants had received and actioned other emails from Rettie including the email with attached tenancy agreement.
20. The Tribunal also took into account the email dated 13th January 2022 (C71) from LPS stating that the deposit certificate was issued to Ms Stewart on 20th January 2021 by email, and the evidence heard that an email from Pinstripe, sent around the same time was not received. The fact that emails from three separate organisations had not been received by the Applicants tended to suggest that there may have been an issue with their email platform at that time.
21. In all the circumstances, the Tribunal found that the landlords complied with their duties in terms of Regulation 3, therefore, the Tribunal did not make an order for payment.

Decision

22. The Respondents did not breach Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) and no order for payment is made.

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/Chair

27th May 2022
Date