



**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/21/3132**

**Re: Property at 8 Keir Street, Bridge of Allan, Stirling, FK9 4NW (“the Property”)**

**Parties:**

**Miss Laura McAllister, 37 Strathallan Road, Bridge of Allan, FK9 4BT (“the Applicant”)**

**Kenilworth Property Co LTD, Lennox House, Lennox Road, Cumbernauld, G67 1LL (“the Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that there had been a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011, and it would make an order for payment of £50.00 in favour of the Applicant.**

**Background**

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order against the landlord failure to lodge a tenancy deposit.

2. The application contained:- Tenancy agreement; Evidence of date of the end of the tenancy; and Evidence from Safe Deposits Scotland confirming when the deposit was protected.
3. The Respondent lodged written representations prior to the case management discussion. The Respondent's letter addressed their procedure for letting property including taking deposits and lodging them with an approved scheme.
4. Both parties appeared at the case management discussion. Mr Sweeny appeared for the respondent with Miss Fleming as his supporter.

### **The Discussion**

5. The applicant advised that this was the first time that she had rented a property. She had paid £2400 on 12 October 2020 as the first month's rent and the deposit. She had then been advised that the landlord required the first six months' rent to be paid upfront. She had paid the remainder of the money, £6000, on around 14 October 2020 in cash. She advised that she had therefore paid the deposit of £1,200 on 12 October 2020. She had moved into the property on 20 October 2020, this was when her tenancy commenced. She had not been aware of the tenancy protection regulations at the beginning of her tenancy.
6. She had received an email from Safe Deposit Scotland advising that the deposit had been lodged on 3 December 2020, this was when she became aware that the deposit had been lodged outwith the 30 day period. She advised that she had left the tenancy on 27 September 2021.
7. The respondent advised that they had quite a few properties, and they use different letting agents to find tenants. He referred to his written representation which set out the procedure that they used for letting property, and what had happened in this case.
8. In summary, the respondent had used Stirling Property Shop to find a tenant for this property. They find suitable tenants and complete all the necessary checks on tenants and thereafter collect the advance rent and deposit. Then the respondents manage the tenancy themselves, until a tenant gives notice and at that stage, they hand the

responsibility back to the agents to organise final inspections, property deposit returns, etc.

9. In relation to the present case, he advised that Stirling Property informed them on 12 October 2020 that they had found a tenant. She was hoping to move in or around 20 October 2020. They were to revert once they had received 6 months' rent and deposit in cleared funds.
10. On 3 November 2020, the respondents received the deposit and rent in the sum of £7,800 from the letting agents. The respondent thereafter paid the £1,200 deposit on 3 December 2020 to Safe Deposit Scotland. They had understood that 3 December 2020 was only 23 working days from when the deposit and rent were paid to them.
11. They submitted that all deposits are normally paid to Safe Deposit Scotland within a week of receipt, but in this case due to reduced staff available in their finance team due to COVID, payments were taking a bit longer to process.
12. The respondent indicated that they had not believed they had broken any rules as they had paid the rent deposit into an appropriate deposit scheme within the 30 working days as is required under the guidelines. They submitted that they had not received funds until 3 November 2021. Further, if they went on that if they calculated the working days between 28 October 2020 (the first date they received any notification regarding rent and deposit being paid in full to Stirling Property Shop) and the date of transfer to Safe Deposit Scotland on 3 December 2020, then that was 27 working days which is still within the allowed 30 working day period.
13. The first time they discovered that there may be a breach of the regulations was when the application was served on them. They requested further clarification from Stirling Property Shop as to what date they received fully cleared funds to cover the deposit and 6 months' rent requested. They discovered that it had been paid in cleared funds to Stirling Property Shop on 20 October 2020. Given this, the respondent accepted that 33 working days would have passed from 20 October 2020 until the money was transferred to Safe Deposit Scotland on 3 December 2020. It appeared that Stirling Property Shop had not been able to bank the cash payment until 28 October 2020 due to covid restrictions in place at that time. Covid restrictions, staff health concerns and the cash payment from the tenant had compounded the delay in having the money banked and sent across to the respondent.

14. They had not been aware of any issue with the payment of the deposit until they received notification of these proceedings.
15. The respondent advised that they had had to claim the deposit at the end of the tenancy as the tenant had not paid the final months' rent. They considered that the failure by the tenant to pay the final months' rent had left the respondent vulnerable to any other charges due to them at the end of the tenancy, such as repairs or liabilities.
16. The applicant agreed that the respondent had had to use the deposit money to pay the last months' rent, she indicated that she had in her head that she had paid an extra month at the start of the tenancy, but she accepted that she had not. She also stated that she had left the tenancy in a better condition than it started. In her opinion, there was no risk to the respondent in claiming the deposit for the final months' rent.
17. Both parties agreed that the tenancy commenced on 20 October 2020 and ended on 27 September. Both parties agreed that the deposit of £1200 had been paid by 20 October 2020 the commencement of the tenancy. Both parties agreed that the deposit money had been secured with Safe Deposit Scotland on 3 December 2020. Both parties accepted that there had been a breach of the tenancy deposit regulations; and that the breach was that the deposit monies had not been lodged in an approved scheme within 30 working days of the tenancy commencing. Both parties accepted that the deposit monies were unprotected for 2 days out with the 30 working day period.
18. The respondent advised that he manages 41 properties, and he has worked in this business for 30 years. He advised that he is well aware of the deposit scheme regulations. His practice is to take deposits. The deposits are all lodged in approved deposit schemes. He advised that this was the first time he had had an application brought against him for breach of the tenancy deposit regulations. He advised that he generally lodges a deposit within the week of them being received by him. Since this incident, he has reviewed his procedures to tighten them up and ensure it does not happen again. While he accepted that there would be an order against him, he considered that it should be a minimal one.
19. The applicant advised that she had not appreciated that the 30 days were in fact *30 working days*, and she had thought the breach had been more serious. She accepted

now that there had not been a great deal of prejudice to her and there had not been a serious breach in this case.

### **Findings in Fact and Law**

20. The Tribunal made the following findings in fact:-

- a. The Respondent was the landlord, and the Applicant was the tenant.
- b. The Applicant had paid the Respondent's letting agents a tenancy deposit on 12 October 2020. totalling £1,200.
- c. That the tenancy commenced on 20 October 2020.
- d. The respondent received the deposit from the letting agents on 3 November 2020
- e. The Respondent had transferred the deposit to Safe Deposit Scotland on 3 December 2020.
- f. The tenancy deposit had not been lodged with an approved tenancy deposit scheme within 30 working days of the tenancy commencing.
- g. The tenancy had ended on 27 September 2021.
- h. The rule 103 application was made to the tribunal on around 25 October 2021

### **Reasons for Decision**

21. The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits, and relevant to this case are the following regulations:-

#### *Duties in relation to tenancy deposits*

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.*

#### *Sanctions*

*9.— (1) A tenant who has paid a tenancy deposit may apply to the [ First-tier Tribunal ] 1 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 [...]2 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 [ First-tier Tribunal ] 1 — (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 ] 1 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.*

22. The Respondent accepted that the deposit had not been paid into an approved scheme in accordance with the terms of the regulations. Therefore, the terms of regulation 10 are engaged, and the tribunal must order that the Respondent pay the Applicant an amount not exceeding three times the amount of their tenancy deposit. The amount to be paid requires to be determined according to the circumstances of the case, the more serious the breach of the regulations the greater the penalty.

23. In this case, I consider that a sum of £50.00 would be appropriate. While there has been a breach of the regulations, I consider that it has been a very minor breach; and any penalty should therefore be at the lowest end of the scale.

24. In considering what penalty to impose, I have had regard to the verbal and written submissions of both parties.

25. I found both parties to be credible. I believed the explanation given by the Respondent. They had detailed the procedure that they followed in lodging a deposit, they appeared to have thought that they were within the 30 days period when they lodged the deposit, given the dates when they had received correspondence from the letting agents. They had obviously thought about this matter when setting out their written representations, they had understood the money had been received on either 28 October or 3 November 2020. Although they had misunderstood the date when they had received

the money, it was clear that they had still proceeded to lodge the deposit in a fairly short period. I also accepted that covid has led to certain delays and restrictions on some services including accessing banks in person, and the explanation of the letting agents seemed reasonable.

26. The Respondent accepted the breach and had not sought to dispute liability. The respondent had breached the regulations by 2 days only. There was no evidence that there was any intention that the deposit would not be lodged in an approved scheme on time. I have a degree of sympathy for the respondent as it appears to have been a genuine error caused by a slight breakdown in communication and covid, which had in effect shortened the time period in which the respondent had to lodge the deposit.
27. I note that the respondent indicated that they have over 40 properties and a business of over 30 years. They advised that they had never been to the tribunal before in relation to the tenancy deposit regulations. They appeared well informed of their responsibilities already and I note that they had now looked at improving those procedures given this case. I consider that this delay of 2 days was a genuine error and did not significantly prejudice the applicant. The deposit was secured in an approved scheme from 3 December 2020 for the remainder of the tenancy.
28. I have to impose a penalty as there has been a breach but given all of the mitigating circumstances, I consider that it should be £50, which recognises that a breach occurred, but that it was not deliberate and takes into account the length of the time that the applicant was prejudiced.
29. For all of those reasons, I consider that the matter is at the lowest end of the scale and any penalty should be no more than minimal. I do not consider that there has been any blatant or reckless disregard for the regulations. Accordingly, I consider that a penalty of £50.00 would be appropriate.

## **Decision**

30. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that there had been a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011, and it would make an order for payment of £50.00 in favour of the Applicant.

## **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

# M Barbour

Legal Member/Chair

23 March 2022  
Date