



**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**

**Chamber Ref: FTS/HPC/PR/22/0194**

**Re: Property at Flagstone Cottages, Butchers Lane, Castletown, Caithness,  
KW14 8TU (“the Property”)**

**Parties:**

**Mrs Jane Davidson, 5 Grange Loan, Edinburgh, EH9 2NP (“the Applicant”)**

**Mr David Hindle, 3 Parkes Way, Blackburn, BB2 4FH (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatridge (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order against the Respondent for payment to the Applicant of the sum of £1,250.00 in terms of Regulation 10 (a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.**

**A: BACKGROUND:**

1. This is an application under Rule 103 of the Procedural Rules and Regulations 9 and 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (the Regulations). The application was made by the Applicant on 21 January 2022.
2. A Case Management Discussion (CMD) was scheduled for 4 April 2022. Written representations were lodged by the Respondent on 9 March 2022 and by the Applicant on 28 March 2022.
3. **The following documents were lodged in respect of this case by the Applicant:**
  - a) Tenancy Agreement between the parties over the property commencing 22 March 2021.
  - b) Email from Safe Deposits Scotland dated 17 August 2021

- c) Email correspondence between the Applicant Respondent between 11 August and 21 September 2021 including payment of deposit receipt and notice given by Applicant to Respondent.
- d) Letter from Respondent to describe his circumstances at the start of the tenancy.
- e) Email exchange between the parties from 9 March to 6 April 2021.

## **B: EVIDENCE**

At the CMD on 4 April 2022 the legal member explained the purpose and process of the CMD. The documents listed above are referred to for their terms and held to be incorporated herein. At the CMD the parties stated the following:

1. The parties had entered into the tenancy over the property on 22 March 2021 and this ended on 21 October 2021. The rent was £455 per month and the deposit of £1000 had been paid by the Applicant at the start of the tenancy and returned to her via the deposit scheme when the tenancy ended. The deposit was lodged with Safe Deposits Scotland on 16 August 2021 following a query by the Applicant to the Respondent as to the receipt of the deposit and the details of the scheme on or around 11 and 12 August 2021.
2. The Applicant stated that she never received all the information stated in Regulation 42, in particular at no point did she receive information about the landlord registration of the Respondent. The Respondent agreed that this was correct as he had not registered as a landlord at any time. This was in relation to the previous tenancy and the tenancy with the Applicant. The legal member advised the Respondent that although he was currently no longer renting out the property, this would be a matter to be reported.
3. The Applicant stated that it had taken some days for the deposit to be lodged even after she had queried that situation and that, although the Respondent states that he had been distracted due to his family situation, he had nevertheless addressed other matters, such as the SSE change of account etc. at the time the tenancy commenced.
4. The Applicant further considered that the penalty in this case should be £3,000 as the Respondent had referred to having a lawyer in previous emails, had stated he had not been renting out property before. The rent had only been £45 less than that for the previous tenant. The tenancy had been a commercial transaction. The Respondent had clearly not taken his responsibilities as a landlord seriously.
5. The Respondent explained that, as stated in his representations, he had had a very difficult time with the death of his father and the events leading up to this. The property had in the past been his holiday home and he had initially let it out to someone who was looking for short term accommodation due to a temporary employment situation. That person had been in the property from November 2020 to February or March 2021. He then offered it to the Applicant, whom he essentially considered to be a colleague. He knew that

because of the pandemic he would not be able to use the property and wanted mainly to have it looked after during that period by having someone living there. For him it was not considered an income stream and he had never advertised the property. He had not used a lawyer but a website, "law depot", to frame the contract. He may have referred to a lawyer having told him to insist on the £1000 deposit to move things on when the initial terms of the contract were discussed between the parties. He had not actually taken legal advice. He had been unaware of the duty to obtain a landlord registration when renting out property, had not realised that the amount of a deposit was limited to 2x the rent and had had too much on his mind with his family situation to remember to lodge the deposit with a registered scheme. He no longer rents out the cottage.

6. The Respondent stated that in his view, given that the tenancy only lasted 6 months at a rent of £455 per month, £3,000 would be excessive as it was more than the total rent paid. He had immediately authorised repayment of the deposit without deductions when the tenancy ended, he had not pursued the Applicant for £50 per month for broadband and telephone which she had not registered in her own name and he had quickly acted when the issue of the lack of lodging the deposit came to light through the Applicant's email to him. The high amount of deposit was due to the furnishings and equipment in the property. He further stated he had immediately accepted that the deposit should have been lodged and that the reason this had not been dealt with was that there was so much going on in his life at the time with both his parents becoming ill and his father dying and he should have dealt with the deposit but had concentrated on his family issues, which took all his energy. He apologised if he had mentioned a lawyer in email correspondence. He had placed the deposit in a separate account he held with the Clydesdale for the property and not into his own day to day account. He stated he considered £450 a reasonable penalty as this was a month's rent.

## **C THE LEGAL TEST:**

1. In terms of Rule 18 (1) of the Procedure Rules the First-tier Tribunal—(a) may make a decision without a hearing if the First-tier Tribunal considers that—  
(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and (ii) to do so will not be contrary to the interests of the parties;
2. In terms of Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (the Regulations) an application under that Regulation must be made within 3 months of the end of the tenancy.
3. In terms of Regulation 10 "if satisfied that the landlord did not comply with any duty in Regulation 3 the First tier Tribunal
  - (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 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.”

4. In terms of Regulation 3 “(1) A landlord who had received a tenancy deposit in connection with a relevant tenancy must, within 30 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.

#### **D: FINDINGS IN FACT**

**Based on the documents and the discussion at the CMDS the Tribunal makes the following findings in facts, which were matters not in dispute between the parties:**

1. The deposit of £1000 was paid by the Applicant to the Respondent on or around 22 March 2021
2. The parties entered into a Private Residential Tenancy over the property which commenced on 22 March 2021.
3. The rent for the property was £455 per month.
4. In terms of Clause 17 the landlord is obliged to lodge the deposit with a registered scheme.
5. The tenancy deposit exceeded the limit of 2x the monthly rent.
6. The last day of the tenancy was 21 October 2021.
7. On or around 11 August 2021 the Applicant contacted the Respondent regarding a receipt of the paid deposit. On or around 12 August 2021 the Applicant asked the Respondent which deposit provider had been used.
8. The deposit funds had been retained in a separate account for the property, not with the Respondents day to day account.
9. The Respondent had been under considerable stress at the time the tenancy commenced due to his family situation.
10. The deposit was lodged by the Respondent with SafeDeposits Scotland on 116 August 2021.
11. The DAN number was forwarded to the Applicant on that date.
12. The deposit was unprotected for about 4 months of the tenancy duration.
13. At the time the tenancy ended the deposit was released to the Applicant very quickly and without deductions.
14. The Respondent had rented out the property for the first time in November 2020 to another tenant and had not advertised it commercially.
15. The Respondent had not consulted a letting agent or solicitor for information about landlord obligations.
16. The Respondent had not registered as a landlord for the property for the previous tenancy and for the tenancy between the parties. He thus had not provided the information required in Regulation 42 (2) (d) of the Regulations at any point to the Applicant.

## E: REASONS FOR DECISION:

1. The facts of the case are not in dispute. There is no need for a hearing. The tribunal was accordingly able to make a decision after the CMD and without a full hearing on the basis of the information provided by both parties.
2. Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 is a regulatory sanction to punish the landlord for non-compliance with the regulations. The non-compliance with the Regulations is not disputed by the landlord.
3. In terms of Regulation 10 (a) if satisfied that the landlord did not comply with any duty in regulation 3 the Tribunal must make a payment order between £0.01 and three times the deposit. The maximum amount in this case with a deposit amount of £1,000 would thus be £3,000. Ultimately the Regulations were put in place to ensure compliance with the Scheme and the benefits of dispute resolution in cases of disputed deposit cases, which the Schemes provide.
4. The Tribunal considers that the discretion of the tribunal requires to be exercised in the manner set out in the case *Jenson v Fappiano* (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015 by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case. The Tribunal has a discretion in the matter and must consider the facts of each case appropriately. In that case the Sheriff set out some of the relevant considerations and stated that the case was not one of *"repeated and flagrant non participation in, or non-compliance with the regulations, by a large professional commercial letting undertaking, which would warrant severe sanction at the top end of the scale"*..It was held that *"Judicial discretion is not exercised at random, in an arbitrary, automatic or capricious manner. It is a rational act and the reasons supporting it must be sound and articulated in the particular judgement. The result produced must not be disproportionate in the sense that trivial noncompliance cannot result in maximum sanction. There must be a judicial assay of the nature of the noncompliance in the circumstances..."*
5. In the case before the Tribunal there is a clear breach of the Regulations. The deposit was not lodged within 30 working days as required by Regulation 3 and the information in terms of Regulation 42 regarding the landlord registration had not been provided to the Applicant. The Tribunal is satisfied that the deposit had been unprotected from 22 March 2021 to 16 August 2021.
6. The Respondent had rented out the property on one previous occasion. He should have familiarised himself with the obligations of a landlord if he wished to rent out the property to a third party. It is the responsibility of the landlord to provide the information as required in Regulation 42 and to lodge the deposit within 30 working days as per Regulation 3. If the landlord does not wish to deal with these matters, these duties have to be explicitly and reliably delegated and checks should be in place to ensure these obligations have

been properly discharged. He had not chosen to involve a letting agent or a solicitor and in those circumstances, regardless of his private and family circumstances, should have taken all necessary steps to comply with his landlord obligations such as registering as a landlord and lodging the deposit within the required time scale.

7. The Applicant moved for the maximum of 3 x the deposit value to be awarded. The Tribunal took into account that the failure to lodge the deposit has not been shown to be a case of deliberate defiance of the Regulations. The Respondent appears to be an "amateur landlord" who was under considerable stress due to family circumstances at the time when he first rented out the property in November 2020 and at the time he rented out the property to the Applicant. It also took into account that at the time the tenancy ended the deposit had been protected and that the Respondent acted quickly once the matter was brought to his attention in August 2021. The tribunal did not consider that the Respondent had acted in deliberate defiance of the Regulations or that he acted fraudulently or with the intention not to return the deposit. The tribunal also did not agree with the Applicant's suggestion that the Respondent had in some way denied having rented out the property before. What the Respondent had stated was that he had no other properties and that he was not an experienced landlord. The correspondence with the Applicant clearly refers to a previous tenant and the amount of rent charged from that tenant. There was no attempt to suppress that information.
8. A further important mitigating factor in this case was that the purpose of the Regulations, to have the deposit protected at the end of the tenancy so that disputes can be adjudicated on by the registered scheme, has been fulfilled. The situation the Regulations were created to avoid, namely that the deposit has been unprotected for the duration of the tenancy and remained with the landlord at the end of the tenancy and the tenants have to then negotiate with the landlord rather than a registered deposit scheme has been avoided
9. However, the tribunal does agree with the Applicant that the Respondent clearly had not taken the obligations as a landlord sufficiently seriously to either make himself aware of all his duties or to delegate this process to professionals.
10. In all the circumstances the tribunal considered it fair, proportionate and just to make an order for the sum of £1,250.00, which is one and a quarter the amount of the deposit and reflects the seriousness of the breach and constitutes a meaningful sanction for non-compliance of the Regulations.

**Decision:**

11. **The First-tier Tribunal for Scotland (Housing and Property Chamber) grants an order against the Respondents for payment to the Applicant of the sum of £1,250.00 in terms of Regulation 10 (a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011**

**12. In terms of rule 26 (12) (a) of the Rules of Procedure a copy of this decision is to be provided to the relevant local authority.**

### **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.**

**Petra Hennig-McFatrige  
Legal Member**

**4 April 2022  
Date**