

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

---



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber)**

**Chamber Ref: FTS/HPC/PR/22/0359**

**Re: Property at 14 Middlesex Gardens, Flat 2/1, Kinning Park, Glasgow, G41 1EL (“the Property”)**

**Parties:**

**Mr Neil Croft, 32 Rotary Way, Shavington, Crewe, Cheshire, CW2 5UD (“the Applicant”)**

**Taylor & Martin Property LTD, 8 Eagle Bridge, Craighall Business Park, Glasgow, G4 9XA (“the Respondent”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**BACKGROUND**

1. By Lease dated 15<sup>th</sup> January 2021 the Applicant rented the property from the Respondent;
2. The start date of the tenancy was 19<sup>th</sup> January 2021;
3. The Lease required payment of a tenancy deposit in the sum of £925. This was paid by the Applicant to the Respondents’ letting agents on 12<sup>th</sup> January 2021, one week prior to the start of the tenancy;
4. The deposit funds were lodged with an approved tenancy deposit scheme on 11<sup>th</sup> March 2021;
5. The tenancy ended on 20<sup>th</sup> December 2021;

6. The Applicant presented an application to the Tribunal seeking an order in terms of Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the TDS Regs”) on 6<sup>th</sup> February 2022. The Application was received within a 3 month period of the termination of the tenancy;

## **THE CASE MANAGEMENT DISCUSSION**

7. The Applicant participated in the Case Management Discussion personally. The Respondent was represented by Mr D Gibb of Tay Letting Limited, Glasgow;
8. The Applicant was seeking “compensation” for the late lodging of the deposit. In his application the Applicant suggested that the deposit had been lodged with an approved scheme 21 days outwith the 30 day period permitted;
9. On behalf of the Respondent, it was accepted that the deposit was not lodged timeously although it had been explained in written submissions forwarded to the Tribunal, prior to the Case Management discussion, and was stated orally at the Case Management Discussion, that this was due to an issue which arose following the migration of 2 different software systems within the offices of the letting agents which resulted in the tenancy deposit being wrongly allocated to a rent account. The matter was noted and rectified immediately afterwards but, unfortunately, outwith the 30 day period provided for within the TDS Regs;
10. At the termination of the tenancy there was discussion and an exchange of email correspondence between the parties seeking to resolve the issue. At that time the Landlord, via his letting agents, indicated that, in normal circumstances, they would have been wishing to retain £200 of the deposit funds to cover cleaning costs etc at the end of the tenancy. The Applicant, Mr Crawford, was not willing to agree to that. He maintained that, at most, only £105 should be retained. The discussions between them at that stage did not advance beyond that;
11. The parties were agreed that, thereafter, the Tenancy Deposit Scheme Dispute Resolution Service was engaged. Ultimately, agreement was reached in relation to the distribution of the deposit funds, £820 being returned to Mr Croft and £105 being forwarded to the Respondents in relation to cleaning costs etc;
12. The Tribunal pointed out to the parties that, while the application indicated that Mr Croft was seeking compensation for the late lodging of the deposit, the function of the Tribunal, rather than to award compensation to the Applicant, was to impose a sanction on a landlord for a failure to comply with the TDS Regs. The distinction between the two was explained by the Tribunal;

13. While the application and, indeed, the submissions lodged in response, suggested that the deposit funds had been lodged with the Tenancy Deposit Scheme 21 days later than it should have been, the Tribunal pointed out that that did not appear to be accurate. While the deposit funds were received by the Respondents, via their letting agents, on 12<sup>th</sup> January 2021, the tenancy did not commence until 19<sup>th</sup> January 2021. The TDS Regs require the tenancy deposit to be lodged with an approved scheme within 30 **working days**(emphasis added). Working days are generally considered to be Monday-Friday and, on that basis, the 30 days for lodging did not expire until 2<sup>nd</sup> March 2021. The funds were received by the Tenancy Deposit Scheme on 11<sup>th</sup> March 2021. On that basis, while the funds were received late, they were 9 days late rather than 21 days late;
14. Mr Gibb, on behalf of the Respondent, elaborated upon his written submissions and, upon the Tribunal seeking clarification of various points, ultimately confirmed the following:-
- (i) The error in this case was a result of a former member of staff receiving the deposit funds on 12<sup>th</sup> January 2021, not allocating them as deposit funds and instead placing them into a holding account;
  - (ii) Mr Gibb had only recently joined the company of Tay Letting, having joined them as head of accounts on 4<sup>th</sup> January 2021, subsequently becoming their Operations Director during January 2022;
  - (iii) When he joined the business in January 2021, he was of the view that their existing software system (CFP Winman) was not adequate for modern working conditions, in particular, working from home, and the company thereafter introduced a new software system (SME Professional). There was then a 3 week period which expired on 21<sup>st</sup> January 2021, during which the old system was migrated with the new system;
  - (iv) After the migration process had been completed, a check was thereafter made of all funds which had not been allocated and were within a holding account. While undertaking that check the error in the original mis-allocation of the deposit funds was noted and the deposit funds were thereafter immediately lodged with a Tenancy Deposit Scheme. They were forwarded on 9<sup>th</sup> March 2021 but Mr Gibb accepted that, due to a delay in the BACS banking system, they will not have been received by the Deposit Scheme until 11<sup>th</sup> March 2021;
  - (v) Tay Letting Limited thereafter devised a detailed deposit handling procedure. While they did have procedures in place before, these procedures were revised and updated to make them more robust following this issue arising;

- (vi) Mr Gibb was aware of only one other case in which there was an issue with a Tenancy Deposit, that being a matter from October 2020, prior to him being employed by Tay Letting Limited but one which was dealt with him thereafter. This arose following a change of tenancy with a new agreement having to be issued to an existing tenant;
  - (vii) Tay Letting Limited are responsible for 1,800 properties throughout Scotland and Mr Gibb is not aware of any other incident, past or present, in which there has been any problems with a tenancy deposit either not being lodged or being lodged late;
  - (viii) He pointed out that the deposit was, in fact, protected by the scheme, albeit 9 days later than it should have been, and that, as indicated previously, the dispute resolution service was engaged, that, of course, being one of the protective factors within such schemes;
  - (ix) Mr Gibb asked the Tribunal to take into account all that had been said in determining the appropriate level of sanction to be imposed;
15. Mr Croft was asked to address the Tribunal in relation to any views he had in relation to the level of sanction which should be imposed. While he made reference to issues arising from the end of tenancy inspection, and the claim for £200 for cleaning etc, he accepted that those issues were dealt with by the Tenancy Deposit Dispute Resolution Service. He accepted that such a Dispute Resolution Service was part of the benefits arising from the Tenancy Deposit Scheme and he availed himself of that with a view to recovering most of the deposit;
16. Mr Croft made various comments about his views in relation to Tay Letting Limited and speculated in relation to the possibility of other deposits not having been lodged and made other comments in relation to his views about the service provided by Tay Letting. Those comments were not relevant to the issue which required to be determined by the Tribunal;
17. Having considered matters, the Tribunal determined that the appropriate sanction to be imposed upon the Respondents was one of £200;

## **FINDINGS IN FACT**

18. The Tribunal found the following facts to be established:-
- a) By Lease dated 15<sup>th</sup> January 2021 the Applicant rented the property from the Respondent;
  - b) The start date of the tenancy was 19<sup>th</sup> January 2021;

- c) The Lease required payment of a tenancy deposit in the sum of £925. This was paid by the Applicant to the Respondents' letting agents on 12<sup>th</sup> January 2021, one week prior to the start of the tenancy;
- d) The deposit funds were lodged with an approved tenancy deposit scheme on 11<sup>th</sup> March 2021;
- e) The tenancy ended on 20<sup>th</sup> December 2021;
- f) The Applicant presented an application to the Tribunal seeking an order in terms of Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 on 6<sup>th</sup> February 2022;
- g) The Application was received within a 3 month period of the termination of the tenancy
- h) The delay in lodging the deposit was due to an error in the allocation of the funds by a former member of staff of the Respondents' letting agents;
- i) The error was noted following a review of systems and procedures by the letting agents and the funds lodged swiftly thereafter;
- j) The tenancy deposit was thereafter protected by the Tenancy Deposit Scheme and was distributed following the Parties engaging the scheme's Dispute Resolution Service;

## **REASONS FOR DECISION**

19. In reaching its Decision, the Tribunal had regard to the following factors:-

- a) The deposit was lodged with a Tenancy Deposit Scheme, although it was acknowledged that it was lodged 9 days later than it should have been;
- b) The deposit was, as a result, protected by the scheme for almost all of the period it ought to have been;
- c) Failure to lodge the deposit appears to have arisen due to an oversight by a former employee of the Respondents' letting agents;
- d) The error of the former employee was noted following an upgrading of software systems and a full review having been undertaken thereafter and the letting agents dealt with the matter swiftly immediately the error was detected;
- e) The Letting Agents thereafter introduced improved and more robust policies for dealing with tenancy deposits in the future;
- f) The Letting Agent admitted the error on their part and did not seek to minimise their responsibility for it;

- g) The deposit, as stated, was protected. The Dispute Resolution Scheme was engaged to the benefit of the Applicant at the end of the tenancy;
- h) In all the circumstances, the failure to lodge the deposit appears to have arisen from an error or oversight by a former member of staff, was detected swiftly, was rectified immediately, resulted in a review of case management systems with a view to ensuring that a similar situation did not arise again, the deposit was protected and the scheme was engaged at the termination of the tenancy;
- i) In all the circumstances, the Tribunal considered that any failure on the part of the letting agents, on behalf of the landlord, was at the lower end of culpability in relation to cases of this nature;
- j) The Tribunal concluded, in the circumstances, that a Sanction in the sum of £200 is appropriate;

## **DECISION**

The Tribunal imposed a sanction on the Respondents requiring payment of the sum of TWO HUNDRED POUNDS (£200.00) STERLING to 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 them.**

**V. C**

**22 April 2022**

---

**Legal Member/Chair**

---

**Date**

