



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”)**

**Chamber Ref: FTS/HPC/PR/22/0953**

**Re: Property at Flat 2/1, 149 Onslow Drive, Glasgow, G31 2QA (“the Property”)**

**Parties:**

**Ms Dorothea Hinrichs, Nesaraj Jeyaraj, Flat 1/2, 32 Craigie Street, Glasgow, G42 8NQ (“the Applicant”)**

**Mr Nacerdine Tcheir, Flat 1/2, 295 Golfhill Drive, Glasgow, G31 2NZ (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment in the sum of Two thousand and forty pounds (£2040) in favour of the Applicants against the Respondent**

**Background**

- 1 The Applicants applied to the Tribunal under regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”) seeking an order for payment as a result of the Respondent’s failure to lodge their tenancy deposit with a tenancy deposit scheme. In support of the application the Applicants provided copy tenancy agreements between the parties, copy correspondence from the three approved tenancy deposit schemes, copy letter to the Respondent intimating the claim together with proof of delivery, excerpt WhatsApp messages between the Applicants and the Respondent and a paper apart which fully outlined the Applicants’ position.

- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 14<sup>th</sup> June 2022, to take place by teleconference.
- 3 The application paperwork was served upon the Respondent by Sheriff Officers on 6<sup>th</sup> May 2022 together with notification of the date and time of the Case Management Discussion and instructions for joining the teleconference.
- 4 On 7 June 2022 the Tribunal received, via email, further written representations from the Applicants' agent Govan Law Centre, in response to a request for information from the Tribunal for evidence of payment of the deposit and for confirmation that the application had been made timeously, within three months of the termination of the tenancy. Evidence of payment of the deposit to the Respondent was provided in the form of bank statements. The agent further confirmed that the deposit had been repaid to the Applicants on 6 May 2022.
- 5 With regard to the timescales for lodging the application the agent advised that on 4 December 2021 the Applicants had asked to sign an updated private residential tenancy agreement, however the Respondent had refused. The Applicants also requested that their deposit be lodged in a deposit scheme and that the Respondent contact the local authority to put their names on the council tax bill. Again the Respondent had refused, claiming neither were his responsibility, nor necessary. The Respondent had asked how long the Applicants intended to stay in the property, which was perceived as threatening and a cause of discomfort. The Respondent was asked to leave by the Applicants and only did so after being asked multiple times. On his departure he advised he would be terminating the tenancy and would give the Applicants thirty days notice. On 5 December 2021 the Applicants each received an email with an attachment titled "termination letter". The Applicants subsequently sent their own notice to terminate the tenancy on 7 December 2021. Thereafter the parties agreed that the tenancy was terminated with effect from 3 January 2022, being the date when the Applicants vacated and returned the keys for the property. The application had therefore been made timeously on 3 April 2022.

### **The Case Management Discussion**

- 6 The Case Management Discussion took place on 14 June 2022. The Applicants were represented by Ms Laura Simpson of Govan Law Centre. Mr Jeyaraj was also present. The Respondent was not in attendance. The Legal Member noted that he had been served with the application paperwork, together with the date and time of the Case Management Discussion, and therefore determined to proceed in his absence.
- 7 The Legal Member explained the purpose of the Case Management Discussion and made reference to the written representations which had been lodged with the application which outlined the Applicants' position. The Legal

Member noted the matters that had been narrated by the Applicants that were relevant to the Tribunal's determination of the application as:

- (i) The Respondent had requested a payment of two months rent as a security deposit, which equated to £680. The Respondent failed to pay the deposit into an approved tenancy deposit scheme. The Applicants had raised this with the Respondent on 13 November 2021 and 3 December 2021 but were ignored.
- (ii) The Applicants had been served with "termination notices" by the Respondent following a number of disputes between the parties which had arisen as a result of the Applicants seeking to enforce their statutory rights as tenants.
- (iii) The tenancy had terminated on 3 January 2022. The Respondent failed to return the deposit to the Applicants until 6 May 2022, more than four months after the date of termination. The Respondent claimed that the delay was due to not having bank details, however these had been provided to the Respondent by the Applicant's agent on 18 March 2022.
- (iv) The Respondent had previously let the property and intended to do so again.

8 Ms Simpson responded to questions from the Legal Member during the Case Management Discussion. She confirmed that the Applicants sought the maximum award, namely three times the amount of the deposit. She pointed to the fact that the Respondent had been made aware of the requirement to place the deposit in a scheme but had wilfully ignored this. She made reference to his conduct during the tenancy, and his failure to adhere to the statutory requirements for serving a Notice to Leave. He had provided her firm with a "personal statement" which indicated he was educated at a higher level and she submitted that he should therefore be aware of what obligations were incumbent on him as a landlord. She further noted that the deposit had been repaid nearly four months after the tenancy had ended. The Respondent was understood to have relet the property. It was also understood that he had a number of properties in the area. She advised that the maximum award would act as a deterrent and ensure that any future tenants were protected.

### **Relevant Legislation**

9 The relevant legislation is contained within the Tenancy Deposit Scheme (Scotland) Regulations 2011 which provide as follows:-

*"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.*

*(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.*

*(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—*

*(a) in respect of which the landlord is a relevant person; and*

*(b) by virtue of which a house is occupied by an unconnected person, unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.*

*(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.”*

*“9.—(1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal 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 by summary application and must be made 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 sheriff—*

*(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 sheriff 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.”*

## **Findings in Fact and Law**

10 The Applicants and Respondent entered into tenancy agreements in respect of the property dated 1 July 2021 in terms of which the Applicants agreed to make payment of a tenancy deposit which equated to £680.

11 The Applicants paid the deposit of £680 to the Respondent at the start of the tenancy.

12 On 5 December 2021 the Respondent emailed the Applicants a document entitled “termination letter”. The document was not in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.

13 On 7 December the Applicants gave notice to terminate the tenancy.

- 14 The tenancy between the parties terminated on 3 January 2022.
- 15 The deposit was returned to the Applicant in full on 6 May 2022.
- 16 The Respondent is in breach of Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 by virtue of their failure to lodge the deposit within an approved tenancy deposit scheme and provide the Applicants with the prescribed information within thirty working days of the commencement of the tenancy.

### **Reasons for Decision**

- 17 The Tribunal determined the application having regard to the application paperwork and the submissions heard at the Case Management Discussion. The Tribunal considered it had sufficient information upon which to make a proper determination of the application. The Respondent had been given proper notification of the application and the Case Management Discussion but had not taken the opportunity to participate in the proceedings.
- 18 Based on the submissions from the Applicants the Tribunal accepted that the Respondent had failed to comply with Regulation 3 of the 2011 Regulations, and therefore Regulation 10 was engaged. On that basis the Tribunal had to consider what level of sanction would be appropriate having regard to the particular circumstances surrounding the breach. The Tribunal did not identify this to be an issue that required a hearing to be fixed on the basis that it was a matter of judicial discretion and the substantive facts of the case were not in dispute.
- 19 The Tribunal considered the requirement to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach. In doing so the Tribunal took into account the fact that the deposit had remained unprotected for the entire term of the tenancy, the Respondent had been made aware by the Applicants of the requirement to lodge it within a tenancy deposit scheme and it had taken more than four months for the deposit to be repaid to the Applicants. The Tribunal further noted the Respondent's conduct during the tenancy, and his apparently wilful ignorance of the obligations that were incumbent on him as a landlord. This was clear from his attempts to terminate the tenancy by serving an incompetent notice. The Tribunal accepted the Applicants' submission that he was an educated person and therefore should have been aware of what was required of him in order to comply with his statutory duties.
- 20 The Tribunal also had cognisance of the fact that the Respondent had relet the property and was the landlord of multiple properties in the area. It could be reasonably assumed that a similar approach to that taken to the Applicants' case would be adopted by him in managing these other tenancies.

- 21 The purpose of the 2011 Regulations is predominantly to penalise landlords in order to ensure they comply with the duty to protect and safeguard tenancy deposits, essentially acting as a deterrent for any future tenancies. It was clear in this case that the Respondent had sought to avoid his statutory obligations and terminate the tenancy when the Applicants raised concerns.
- 22 The provisions of Regulation 10 leave the Tribunal with no discretion where a landlord is found to have failed to comply and permit an award of up to three times the deposit. In this case the Tribunal considered an award at the higher end of the scale was warranted, particularly as there appeared to be no ignorance on the Respondent's part, he was made aware of his obligations, and had chosen to ignore them, and his general conduct of the tenancy was a cause of concern. The Tribunal also took into account the impact on the Applicants caused by the delay in the return of the deposit. Therefore, balancing the competing factors in the particular facts and circumstances of this case, the Tribunal considered that the maximum sanction in the sum of £2040 would be appropriate, being a sum equivalent to three times the deposit.
- 23 The Tribunal therefore made an order against the Respondent in the sum of £2040.

### **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.**

R O'Hare

15/06/2022

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**Legal Member/Chair**

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**Date**