



**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 2011**

**Chamber Ref: FTS/HPC/PR/22/1110**

**Re: Property at 18B Peterson Hall, 25 Roseangle, Dundee, DD1 4LS (“the Property”)**

**Parties:**

**Miss Iona Imrie, 3 Rhodes Holdings, North Berwick, East Lothian, EH39 5PH (“the Applicant”)**

**McLaren Dundee Ltd, CO Optimus Fiduciaries Ltd, St Marys The Parade, Castletown, Isle of Man, IM9 1LG (“the Respondent”)**

**Tribunal Members:**

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

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay the sum of ONE HUNDRED POUNDS (£100) to the Applicant**

**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 and received by the Tribunal on 19.4.22.
2. It was accepted on 5.5.22.
3. A Case Management Discussion (CMD) was scheduled for 12.7.22. This was intimated to the Applicant in letters of 21.5. 22 and 13.6.22, both emailed to the email address provided by the Applicant.
4. Detailed representations from the Respondent were received on 7.6.22, which were sent to the Applicant on 13.6.22. The tribunal was satisfied that the Applicant had received the necessary notification for the CMD.
5. The following documents were lodged in respect of this case by the Applicant:

- a) Student Tenancy Agreement between the parties for the property commencing 19.2.22 and ending 29.7.22
- b) Payment detail screenshot re payment of the deposit on 10.2.22
- c) Correspondence of SafeDeposits Scotland to Applicant

The Respondents lodged the representations of 7.6.22.

## **B: THE CMD**

1. At the CMD on 12.7.22 the legal member explained the purpose and process of the CMD.
2. Only the Respondent's representative Ms Kelly took part in the teleconference. The Applicant did not participate.
3. Ms Kelly referred to the detailed representations of the Respondents and reiterated that once the matter had come to light, a full review of the processes had been undertaken by the management company, the member of staff was no longer working there and all steps had been taken to avoid a delay of this nature occurring again. The delay was only a few days. The deposit was lodged late but prior to the application being made and prior to the tenancy coming to an end. She referred the Tribunal to the recent decision in case FTS/HPC/PR/21/3226, where an award of less than the deposit sum was made in similar circumstances. She asked that the Tribunal should exercise its discretion accordingly. There was no motion to dismiss the application.

## **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 working days of the beginning of the tenancy (a) pay the deposit to the scheme administrator of an approved scheme”.

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

**Based on the documents and the information received at the CMD the tribunal makes the following findings in facts:**

1. The parties entered into a tenancy agreement for student accommodation over the property starting on 19.2.22.
2. The tenancy is ongoing.
3. On 10.2.22 the Applicant paid to the Respondent's agents CRM Students Limited a deposit of £150.
4. The deposit was not lodged with a registered scheme until 7.4.22.
5. The Respondents employ a management company, CRM Students Limited, which deals with the lodging of deposits on their behalf.
6. Once the Respondents became aware of the delay in lodging the deposit they contacted the management company and a full review of the procedures was undertaken.
7. The late lodging of the deposit by 6 days was due to human error.
8. A check of all the Scottish sites they deal with was undertaken regarding lodging of deposits.
9. Staff training was undertaken by the management company.
10. The member of staff in question no longer works at the management company.
11. The Respondents immediately accepted the breach had taken place and took steps to avoid a repetition of a delay.
12. Prior to being lodged the deposit funds were held in a dedicated client account.

#### **E: REASONS FOR DECISION:**

1. The documents lodged are referred to for their terms and held to be incorporated herein.
2. The Tribunal did not consider that there was any need for a hearing as both parties had provided detailed information and the representations of the Respondent had been intimated to the Applicant. The Applicant had been duly notified of the possibility of making further representations and attending the CMD but had not made further representations and did not attend. The Applicants thus did not dispute the representations made on behalf of the Respondents.
3. 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 explicitly admitted by the landlord and has been fully explained.

4. 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 £150 would thus be £450.
5. Ultimately the Regulations were put in place to ensure compliance with the Scheme and ensure access for tenants to the benefits of dispute resolution in cases of disputed deposit cases, which the schemes provide.
6. The Tribunal considered that since the facts of the case were not in dispute the Tribunal could deal with the matter in the absence of the Applicant and should do so, given the purpose of the Regulations.
7. 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 , on 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...*"
8. 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. It was, however, lodged by 7.4.22 and thus prior to the tenancy end. The dispute resolution mechanism of the Deposit Scheme will be available to the parties at the relevant time. The deposit was lodged without further prompting of the landlord by the tenant and the landlord, who is a professional landlord, immediately took steps to avoid a repetition of a delay in the lodging of deposits by alerting the management company employed by them to the problem. The management company undertook a full review and checked the position for all relevant Scottish deposits they received. The tenancy started on 19.2.22. The relevant date of 30 working days after the start of the tenancy is 1.4.22. The relevant delay in this case is 6 days from the expiry of 30 working days after the start of the tenancy to the date the deposit was lodged on 7.4.22.
9. Applying the considerations in the approach to exercising discretion as set out above in all the circumstances the tribunal considered it fair, proportionate and just to make a payment order for the sum of £ 100 which is at the low end of the available disposals. This reflects the seriousness of the breach, the duration of the breach, the fact that the Respondent had taken appropriate steps to avoid a repeat of delayed lodging of deposits, that the funds were held in a separate

client account until lodging and that the deposit is now protected so that at the end of the tenancy the Applicant will have access to the dispute resolution mechanism as envisaged by the Regulations. In all the circumstances the Tribunal thus considers that a sum of £100 constitutes a meaningful and appropriate sanction for non-compliance of the Regulations.

**Decision:**

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber) grants an order against the Respondent for payment to the Applicant of the sum of £100 in terms of Regulation 10 (a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011**

**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 McFatridge

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Legal Member/Chair

12 July 2022

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Date