



**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/22/1170

Re: Property at North Lodge, Deuchar Farm, Fern, DD8 3QZ (“the Property”)

Parties:

**Mr Alan Small, Prestonhall House, Prestonhall Industrial Estate, Cupar Fife,
KY15 4RD (“the Applicant”)**

**J Farquharson and Son, Mr Clark Farquharson, Deuchar Farm, Fern, By Forfar,
Angus, DD8 3QZ; Deuchar Farm, Fern By Forfar, Angus, DD8 3QZ (“the
Respondent”)**

Tribunal Members:

Fiona Watson (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order is granted against the Respondent for
payment of the undernoted sum to the Applicant(s):**

Sum of SEVEN HUNDRED AND FIFTY POUNDS (£750) STERLING

- Background
- 1. An application was submitted to the Tribunal under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. Said application sought an order be made against the Respondent on the basis that the Respondent had failed to comply with his duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).

- The Case Management Discussion
2. A Case Management Discussion (“CMD”) took place on 4 July 2022 by tele-conference. The Applicant was personally present. The Respondent was represented by Mr Buchan of Thorntons Law LLP.
 3. The Applicant sought an order from the Tribunal on the basis that the Respondent had failed to comply with their duties to lodge a deposit in a tenancy deposit scheme within 30 working days of the start of the tenancy in terms of Regulation 3 of the 2011 Regulations.
 4. The Applicant submitted that they had entered into a tenancy with the Respondent which commenced 15 October 2020. No formal agreement was entered into, and the parties were acquaintances. The Applicant and his (now) wife had suffered a house fire and required temporary accommodation, the rental for which was paid for initially by his insurance company. No formal tenancy agreement was entered into, but a letter from the Respondent setting out the agreed terms of property, tenants, duration and rent was lodged with the application. It is understood that this had been prepared for the benefit of the Applicant’s insurance company. The Applicant, via moneys received from his insurance company, paid a £1500 deposit to the Respondent prior to the start of the tenancy. The deposit was received from the insurance company by the Applicant’s wife, who then paid it to the Respondent. The tenancy had been entered into by the Applicant and his wife as joint tenants. Whilst the Applicant’s wife is not named on the application, she is aware of the application and supportive of it.
 5. The tenancy agreement ended on 1 February 2022. The deposit was only paid into the Safe Deposits Scotland tenancy deposit scheme on 29 November 2021. The Applicant had been unaware of the existence of the scheme or the Respondent’s obligations towards the deposit being lodged in it, until he received written notification from the scheme that the deposit had been lodged, and that it had been lodged late.
 6. The Applicant submitted that there had been a number of issues regarding the Respondent’s behaviour during the course of the tenancy. This had forced his wife to leave the Property prior to Christmas, with the Applicant leaving in February 2022. Reference was made to her having suffered ill health. The Applicant also referred to some repairing issues which he claimed had occurred, however these were accepted as being irrelevant for the purposes of this application. It was submitted that the market rent for the property was around £700, but as the insurance company was willing to pay £1500 per month, this figure was agreed to cover rent and household bills. It was submitted that the Respondent had benefitted from the arrangement by receiving a higher income. It was submitted that the Respondent had previously rented out the Property on a residential basis and that the Applicant had received mail for a number of other people during the tenancy.

7. At the end of the tenancy agreement, the Respondent requested that the tenancy deposit scheme return the deposit to the Respondent. Whilst there had been some disagreement by the Applicant as to the reason as to why the deposit was being returned to the Respondent, it was agreed by the Applicant that it should indeed be returned to him and accordingly this request was not disputed by the Applicant via the scheme's dispute resolution service.
8. The Respondent's representative submitted that it was not disputed that the Respondent had failed to lodge the tenancy deposit timeously. The Respondent had not previously let the property out in any way other than as a holiday let and was not aware of the obligation to lodge the deposit. The Respondent had taken advice on or around November 2021 and when advised at that stage of his obligations, he took steps to lodge the deposit in full. The parties had known each other prior to the lease being agreed and the Respondent was trying to do the Applicant a favour under difficult circumstances. He regretted agreeing to lease the property out, and would not do so again other than as a holiday let, as he was used to doing. It was submitted that the deposit had been lodged prior to the end of the tenancy, and the tenants could have disputed the return of the deposit to the Respondent at the end of the agreement if they had wished to do so. They did not.
9. It was submitted that the sanction for failure to lodge the deposit timeously is a sanction against the landlord, and not a compensatory payment to the Applicant. The Tribunal requires to assess culpability. Reference was made to the case of *Jenson v Fappiano (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015*. The Tribunal must impose a fair, proportionate and just sanction in the circumstances of the case. The Respondent had not been a landlord (other than as a holiday let) before. As soon as he was aware of his obligations, he ensured compliance. The tenants had access to the tenancy deposit scheme's dispute resolution service at the end of the tenancy and therefore no actual prejudice was suffered, nor any loss. It was submitted that a reasonable sum to be awarded would be on the lower end of the scale, and the figure of one third of the deposit was suggested.

- Findings in Fact

10. The Tribunal made the following findings in fact:

- (a) The parties entered into a private residential tenancy which commenced 15 October 2020;
- (b) The Applicant paid a deposit of £1500 to the Respondent;
- (c) The Respondent failed to lodge the deposit of £1500 into an approved tenancy deposit scheme within thirty working days of the start of the tenancy, as required under Regulation 3 of the 2011 Regulations;
- (d) The deposit was lodged within the tenancy deposit scheme on 29 November 2021;

- (e) The Tenancy ended on 1 February 2022;
- (f) The parties had agreed that the Deposit should be returned to the Respondent at the end of the tenancy.

- Findings in Law

11. The Tribunal made the following findings in law:

11.1 The Respondent was in breach of their duties under Regulation 3 of the 2011 Regulations, which states 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.*

11.2 The Respondent was in breach of their duties under Regulation 42 of the 2011 Regulations, which states as follows:

42.—(1) *The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).*

(2) *The information is—*

- (a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;*
- (b) the date on which the tenancy deposit was paid to the scheme administrator;*
- (c) the address of the property to which the tenancy deposit relates;*
- (d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;*
- (e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and*
- (f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.*
- (3) The information in paragraph (2) must be provided—*
- (a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or*
- (b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.*

11.3 The Tribunal must grant an order in terms of Regulation 10 which states as follows:

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.

- **Reasons for Decision**

12. The Tribunal was satisfied that the Respondent was in breach of their duties under Regulations 3 and 42 as aforesaid. This was by the Respondent's own admission.

13. The 2011 Regulations were introduced to provide security for tenants in paying over deposits to landlords and to address an issue with some landlords taking tenancy deposits and then failing to pay them back where they were lawfully due at the end of the tenancy. The 2011 Regulations also provide that parties have access to an independent and impartial dispute resolution mechanism within a scheme to address any deposit deductions which require to be considered.
14. By their failure to lodge the deposit into an approved tenancy deposit scheme within 30 working days of the start of the tenancy, the deposit was not protected for a period of 13 months.
15. The Tribunal noted that the Respondent lodged the deposit once he had obtained legal advice, and that this was done in advance of the end of the tenancy. Accordingly, the tenants were not deprived of their ability to utilise the tenancy deposit scheme's dispute resolution service, had there been any dispute as to the return of the deposit. As appeared to be the case, there had been agreement between the parties that the deposit should be returned to the Respondent at the end of the tenancy (albeit the background to this and the specific reason behind this agreement appeared to be in dispute.) However, the Tribunal was satisfied that there had been no prejudice to the tenants in this regard.
16. Whilst there appeared to have been some dispute between the parties as to whether the Respondent had leased the Property previously and therefore had some experience as a residential landlord, there was no evidence before the Tribunal in this regard. The Respondent's representative submitted that the Respondent had not previously let the property in any way other than as a holiday let, and would not do so again in the future. The Tribunal took this at face value. However, if it was the case that the Respondent had no prior leasing experience, then the Respondent should have taken legal advice prior to entering into the lease with the Applicant, to ensure that he understood his obligations. Whilst there appeared to have been some issues during the course of the tenancy and a breakdown in the relationship between the parties, this was of no relevance to the application at hand.
17. The Tribunal was satisfied that the late lodging of the deposit did not prejudice the tenants, in that they still had access to the scheme's dispute resolution service if they required it, when the tenancy ended. They agreed to the deposit being returned to the Respondent at the end of the tenancy, and accordingly had suffered no loss. However, the Respondent's failure to lodge the deposit for a period of 11 months during the tenancy is not insignificant. There was a risk to the tenant, and to the deposit, during that period. The Tribunal was satisfied that there was no evidence before it of any intention by the Respondent to withhold the deposit, and that the circumstances of the application did not merit an award being made at the higher end of the scale. The Tribunal considered that an appropriate award would be £750.

- Decision

18. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant in the undernoted sum:

SEVEN HUNDRED AND FIFTY POUNDS (£750) STERLING

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.

Fiona Watson

Legal Member/Chair

Date: 4 July 2022