

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) under Regulation 10 of the Tenancy Deposit
Schemes (Scotland) Regulation 2011**

Chamber Ref: FTS/HPC/PR/22/1444

**Re: Property at 11 Herriet Street, Pollokshields, Glasgow, G41 2NN (“the
Property”)**

Parties:

**Mrs Nasim Hussain, 11 Niddrie Road, Flat 2/1, Glasgow, G42 8NT (“the
Applicant”)**

Mrs Naheed Ameen, 69 Langhau Road, Glasgow, G53 7SE (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment in the amount of £1700 should
be made.**

Background

The Applicant lodged an application on the 16th May 2022 under Rule 103 of the First
Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations
2017 (“the Rules”) seeking in terms of Regulation 10 of the Tenancy Deposit Schemes
(Scotland) Regulations 2011 (“TDS”).

Lodged with the application were:

1. Tenancy Agreement showing a commencement date of 1st January 2019 with
a rent of £850 per month and a deposit of £850
2. Confirmation from the three deposit schemes that nothing was lodged
3. WhatsApp Chat messages

The Tribunal wrote to the Applicant asking for confirmation of the end date of the tenancy. In an email of 2nd June 2022, the Applicant's representative confirmed that they left on 1st May 2022.

The papers were served by Sheriff Officer on 21st July 2022.

Various emails were sent in by the parties and crossed over for response.

Case Management Discussion

The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented by her son, Naveed Hussain. The Respondent represented herself.

The Chairperson introduced everyone and explained the purpose of a CMD in terms of Rule 17.

The Chairperson confirmed with Mr Hussain that the Applicant's case essentially was that she had entered in to the Tenancy Agreement for the property, commencing 1st January 2019 and that she had paid £850 by way of deposit. Mr Hussain said that £1700 had been paid in cash to the Respondent direct, which represented the deposit and the first month's rent, being £850 each. He said that the deposit had not been lodged in a tenancy deposit scheme and he was seeking three times the amount of the deposit by way of compensation.

The Respondent confirmed that she had received £1700 in cash at the start of the tenancy. She accepted that the Tenancy Agreement stated that a deposit of £850 was to be paid. She said that she had used a letting agent in the past and was not 100% aware of the difference between a deposit and a month's rent in advance. She accepted that she should have placed the deposit in a scheme.

The Chairperson asked the Respondent how many rental properties she had, and she replied that she had two. A letting agent deals with the other property. She had previously used a letting agent in relation to this property, but it was empty and she was intending to sell it. She was asked by a friend if she could let it to their friend, and she agreed. She again said that she accepted that the Tenancy Agreement referred to a deposit of £850.

The Chairperson observed that there was mention in the papers of the Respondent not being registered as a landlord with the local authority. She said that she had left it to her letting agent, but as soon it was brought to her attention that she was not registered she attended to it herself. This was in December 2021.

The Respondent said that the Applicant had left the property in a mess. The Chairperson said that if the deposit had been lodged in a scheme the Respondent would then have had a mechanism for adjudicating on whether the deposit should be returned.

Findings In Fact

1. The parties entered in to a tenancy agreement in respect of the property;
2. The commencement date was 1st January 2019;
3. A deposit of £850 was paid;
4. The tenancy ended on 1st May 2022;
5. The deposit was not lodged in an approved Tenancy Deposit Scheme;
6. The deposit was not returned at the end of the tenancy;
7. Throughout the tenancy the Respondent was not registered as a landlord with the local authority.

Reasons For Decision

Rule 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“TDS”) states:

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.

The tenancy began on 1st January 2019 and ended on 1st May 2022. The deposit was not lodged in a scheme. The Respondent had clearly breached the regulation and accepted that breach.

Rule 10 gives the Tribunal power to impose a sanction of up to three times the amount of the deposit. The amount is at the discretion of the Tribunal. The Tribunal must consider the seriousness and the nature of the breach.

In this case the deposit was not lodged at all. The tenancy ran for a period of just over three years. The Applicant's money was unprotected for that length of time, which is serious. Depositing the money in a scheme protects a tenant from several factors, including the landlord becoming bankrupt.

The Respondent said that she did not know if her responsibility to lodge a deposit in a scheme and that she was unclear about the difference between a deposit and a month's rent up front.

The Respondent was also not registered as a landlord with the local authority for the majority of the duration of the tenancy. She said that she thought her letting agent had attended to it.

The Tribunal did not consider the breach to be at the top end of the scale, but the Tribunal was concerned that the Respondent was acting as a landlord while unaware of her responsibilities in relation to deposits and without being registered with the local authority. A landlord cannot blame a letting agent in those circumstances, the duty on the landlord is a personal one and is so because of the importance of compliance.

In all the circumstances the Tribunal decided to award a sum equivalent to twice the amount of the deposit.

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.

A Kelly

Legal Member/Chair

Date: 19/08/2022