



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/22/1906**

**Re: Property at 71A Watson Street, Dundee, DD4 6HG (“the Property”)**

**Parties:**

**Mr Nairn Comyn, 34D Polepark Road, Dundee, DD1 5QS (“the Applicant”)**

**Mr Paul Letley, Mr Brian Kidd, Mrs Gwendolyn Kidd, per Pavillion Properties, India Buildings, 86 Bell Street, Dundee, DD1 1HN; 9 Lethnot Street, Barnhill, Dundee, DD5 2QS; 9 Lethnot Street, Barnhill, Dundee, DD5 2QS (“the Respondents”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in favour of the Applicant should be made in the sum of £375.**

**Background**

1. By application received in the period between 16<sup>th</sup> and 23<sup>rd</sup> June 2022 and made under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”), the Applicant applied for an order for payment in the sum of three times the tenancy deposit of £375 paid in respect of a tenancy agreement between the parties that commenced on 28<sup>th</sup> July 2020 and ended on 27<sup>th</sup> May 2022. The Applicant lodged a copy of the tenancy agreement and information in relation to the approved tenancy deposit schemes, indicating that the tenancy deposit was lodged on 30<sup>th</sup> October 2020.
2. A Case Management Discussion (“CMD”) took place by telephone conference on 15<sup>th</sup> September 2022. The Applicant was in attendance. Mr Paul Letley of Pavillion Properties appeared on behalf of the Respondents.

3. Mr Letley explained that Riverside Properties was the trading name of a partnership which had been dissolved. The CMD was adjourned to allow the application to be served upon all Respondents.
4. By email dated 18<sup>th</sup> September 2022, Mr Paul Letley stated that Riverside Properties was the trading name of the partnership comprising Paul Letley (50%) Brian Kidd (25%) and Gwendolyn Kidd (25%), providing contact details for the Respondents.
5. By email dated 1<sup>st</sup> December 2022, Mr Letley lodged the following written representations:

*It is admitted that the deposit of £375 was lodged late by Pavillion Properties. Pavillion Properties manage over 750 flats and houses and the late lodgement of the deposit in this case is an exception. We have procedures in place whereby our accounts staff are notified automatically of the start dates of new tenancies.*

*In order to explain the particular reason for the late lodgement of this particular deposit we should consider the prevailing background situation in which we were working.*

*The Covid Crisis began in early 2020 and on 20.03.20 the Scottish Government announced the immediate closure of schools, nurseries, pubs, gyms, restaurants and all social venues. Guidance to Lettings Agents was issued. We were told to avoid contact between people, employ social distancing and postpone evictions. We were told to shut down offices where remote working was possible. At the same time the guidance asked Letting Agents to avoid people being made homeless and we were told to postpone routine certification requirements. The Government encouraged Local Authorities to take a pragmatic approach to enforcement during this period.*

*On 23rd March Scotland was locked down. On 27th March 2020 the Stay At Home Rules were published. On 4th April all Retail outlets selling non-essential goods were closed. Pavillion Properties followed the Government Guidelines as closely as possible. The Pavillion Properties Office was closed. We had some staff on furlough and we maintained a skeleton staff to ensure essential services were maintained for the benefit of tenants. This included limited re-letting of properties using social distancing methods of viewing etc.*

*The person who normally handled the lodging of deposits was covering several other positions and had handed the role to another member of the accounting team who was working from home. Clearly there was a lot of confusion, learning of new skills and temporary alterations to procedures.*

*In this case there was no deliberate intention to lodge the deposit late and we feel that some allowance should be given in the circumstances of the pandemic which was affected all areas of life. At that time many rules were relaxed including car MOT's, Companies, House time limits, HMRC time limits, Planning Permissions not required for many temporary developments. We feel that it could be argued that the late lodgement of a deposit should be considered in the same way.*

### **Case Management Discussion**

6. A CMD took place by telephone conference on 12<sup>th</sup> December 2022. The Applicant was in attendance. The Respondent, Mr Letley, was in attendance and representing the second and third Respondents.
7. The Tribunal noted that the Respondents were not disputing that the Regulations had been breached, and that the matter before the Tribunal was the amount of penalty to be awarded.
8. The Applicant referred to his application and the previous discussion of the Tribunal. He said the Tribunal should take account of the fact that three responsible adults failed to follow the law. He accepted the penalty would not be three times the tenancy deposit, as it was not a case at the more serious end of the scale. He was content to leave the sum to the discretion of the Tribunal.
9. Mr Letley referred to his written submission as outlined above. This was a case that had slipped through the net and there had been no loss to the Applicant. Responding to questions from the Tribunal, Mr Letley said that the Respondents had not been made aware of the matter at the time by the member of staff. He said there had been one other case where the Respondents had not lodged the deposit timeously. The circumstances were different and involved a tenant moving in a month early, and the member of staff responsible for lodging the deposit being unaware of the change to the date of moving in. There had been no intention to defraud the Applicant. In relation to the amount of penalty, Mr Letley said that one month's rent might be a fair sum, as there had been no loss and this was a bonus for the Applicant.
10. The Applicant pointed out that it was not a bonus, but a requirement of the law that the deposit be lodged.

### **Findings in Fact and Law**

11.
  - (i) The parties entered into a tenancy agreement in respect of the Property that commenced on 28<sup>th</sup> July 2020 and ended on 27<sup>th</sup> May 2022.

- (ii) A tenancy deposit of £375 was paid to the Respondents by the Applicant at the commencement of the tenancy.
- (iii) The deposit was not lodged with an approved tenancy deposit scheme within 30 days of the commencement of the tenancy.
- (iv) The deposit was lodged with an approved tenancy deposit scheme on 30<sup>th</sup> October 2020.
- (v) The Respondents have breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.

### Reasons for Decision

12. The Applicant's deposit was not lodged with an approved tenancy deposit scheme timeously as required by Regulation 3. The deposit remained unprotected for a period of two months beyond the 30 days allowed for in the Regulations.
13. The Regulations were put in place to ensure compliance with the tenancy deposit scheme, and to provide the benefit of dispute resolution for parties. The Tribunal considers that its discretion in making an award 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 must consider the facts of each case appropriately.
14. The Tribunal took guidance from the decision of the Upper Tribunal UTS/AP/19/0020 which states: '*Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals.*'
15. The Tribunal considered this to be a serious matter, although not one at the most serious end of the scale. The Tribunal considered the Respondents' mitigating circumstances and noted that there was no attempt to deny responsibility for failing to comply with the Regulations.
16. However, the Tribunal took into account that the Respondents are experienced professionals with considerable experience of letting properties. The Applicant was entitled to have confidence that the Respondents would comply with their duties as a landlord.
17. Taking all the circumstances into account, including the length of time for which the deposit was unprotected, the Tribunal decided it would be fair and just to award a sum of £375 to the Applicant, which is one times the tenancy deposit.

## **Decision**

18. The Tribunal grants an order against the Respondents for payment to the Applicant of the sum of £375 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.**

**Helen Forbes**

**Legal Member/Chair**

**12<sup>th</sup> December 2022  
Date**