



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy
Deposit Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/22/2341

**Re: Property at Monboddie Castle, Fordoun, Aberdeenshire, AB30 1JT (“the
Property”)**

Parties:

Mr Antony Leary, Flat 3, Keithhall House, Inverurie, AB51 0LD (“the Applicant”)

**Mrs Louise Crighton, 29 Maungakiekie Avenue, Greenlane, Auckland, 1051,
New Zealand (“the Respondent”)**

Tribunal Members:

Graham Harding (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent to the Applicant in the sum of £4000.00 and that the Respondent pay the Applicant’s deposit of £2000.00 into an approved tenancy deposit scheme within 30 days of the date of issue of this order.

Background

1. By application dated 12 July 2021 the Applicant applied to the Tribunal for an order under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicant submitted a copy of the tenancy agreement, a summary of events, copy emails and invoices in support of the application.
2. Following further correspondence between the Applicant and the Tribunal administration, by Notice of Acceptance dated 21 July 2022 a legal member of the Tribunal accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. By emails dated 7 and 14 September 2022 the Respondent submitted written representations to the Tribunal.
4. By email dated 4 October the Applicant's representative, Rebecca Walker of Ledingham Chalmers LLP, Solicitors, Aberdeen, advised the Tribunal she would be representing the Applicant at the CMD.

The Case Management Discussion

5. A CMD was held by teleconference on 5 October 2022. The Applicant attended in person and was represented by Ms Rebecca Walker. The Respondent attended in person.
6. The parties agreed that they entered into a short assured tenancy that commenced on 15 February 2016 at an initial rent of £2000.00 per calendar month. They also agreed that the Applicant had paid a deposit of £2000.00 at the commencement of the tenancy and that the Respondent had not paid the deposit into an approved tenancy deposit scheme.
7. The Respondent explained that her failure to lodge the deposit in an approved scheme had been due to her lack of understanding of the regulations and had not been due to malice. She said that she had rented out the property on one previous occasion and had not lodged the deposit in an approved scheme then. She said at the end of that tenancy she had repaid the deposit to the tenant as the property had been left in a good condition.
8. The Tribunal queried with the Respondent the documents, photographs and submissions lodged by her and asked what relevance these had with regards to the Respondents failure to lodge the deposit in an approved scheme. The Respondent confirmed that they were not relevant to the application but explained her position with regards to the fact that she had not pursued the Applicant for further rent or payment for other outgoings expended on the property. She said the photographs explained why she had not returned the deposit.
9. The Tribunal referred the Respondent to the terms of the tenancy agreement with regards to the deposit and asked if she had read it when she had signed it. The Respondent said that she had focussed on the Inventory and had not gone through the agreement. She accepted that not reading it was her fault.
10. The Respondent queried if the application was timeous. She explained that she had tried to amend the tenancy agreement in 2021 but the Applicant had not returned the signed lease. She said that the tenancy was terminated on 14 April 2022 although the Applicant had remained in the property until 25 April but had not paid any rent for the remaining 11 days. She queried if the application was valid as the Applicant had amended the application. The Tribunal noted that the application had been submitted on 12 July 2022 and was therefore within the three month time limit imposed by the regulations.

11. The Tribunal noted that the Respondent would be happy to lodge the deposit in an approved scheme. She said the failure to lodge the deposit had been a mistake on her part.
12. For the Applicant Ms Walker submitted that the application was timeous having been made within three months of the end of the tenancy. She submitted that the Tribunal had sufficient information before it to make a decision and that there was no dispute as to the facts. She submitted that the Tribunal should grant both parts of the order sought and impose a financial sanction on the Respondent and order that the deposit be lodged in an approved scheme as the Applicant disputed the Respondent's position with regards to the condition of the property. It was therefore appropriate that this be adjudicated upon through the tenancy deposit scheme. She said that the Respondent also had further remedies in respect of any additional claims she may have.
13. The Respondent advised the Tribunal that it was not her intention to rent out the property again in the future.

Findings in Fact and Law

14. The parties entered into a Short Assured Tenancy that commenced on 15 February 2016 and endured until 14 February 2017 and from month to month thereafter at an initial rent of £2000.00 per calendar month.
15. The Applicant paid a deposit of £2000.00 at the commencement of the tenancy that was retained by the Respondent throughout the duration of the tenancy and not paid into an approved tenancy deposit scheme.
16. The Applicant was served with a Notice to Quit to bring the tenancy to an end on 14 April 2022 and vacated the property on 25 April 2022.
17. The Applicant submitted an application under Regulation 9 of the 2011 Regulations on 12 July 2022. The application was timeous.
18. The Respondent has retained the deposit following the end of the tenancy.
19. The Respondent is a registered landlord. She does not own any other rented properties.
20. The Respondent rented out the property on one previous occasion and did not lodge the deposit in an approved scheme.
21. The Respondent does not intend to rent out the property again in the future.
22. The Respondent is in breach of Regulation 9 of the 2011 Regulations.

Reasons for Decision

23. Although the Respondent provided a significant amount of information in her written submissions with regards to her reasons for withholding repayment of the deposit to the Applicant these were not matters that were of relevance to any material degree in respect of the application before the Tribunal. The Tribunal was being asked to determine if the Respondent was in breach of Regulation 3 of the 2011 regulations and if she was had the Applicant made a timeous application in terms of Regulation 10.
24. It was a matter of agreement between the parties that they had entered into a Short Assured Tenancy that commenced on 15 February 2016 and had continued until it was terminated by the Respondent on 14 April 2022 with the Applicant ultimately leaving the property on 25 April 2022.
25. It was accepted that the Respondent had failed to lodge the Applicant's deposit in an approved tenancy deposit scheme for the duration of the tenancy. The Respondent maintained that following the end of the tenancy she had retained all of the deposit towards the cost of heating oil, rent and cleaning.
26. The Tribunal was satisfied that the Respondent was in breach of Regulation 3 of the 2011 Regulations and given that the Application had been submitted to the Tribunal on 12 July 2022 the Tribunal was also satisfied that the application was timeous. Any amendment to correct a minor typographical error in the spelling of the Respondent's name would not have affected the validity of the application and in any event was submitted on 19 July 2022 in advance of the final date for submitting a claim namely 25 July 2022.
27. Having established that the Respondent was in breach of Regulation 3 and that the application was timeous the Tribunal must in terms of Regulation 10 of the 2011 Regulations impose a financial penalty on the Respondent and may also order the Respondent to pay the deposit into an approved tenancy deposit scheme.
28. In terms of Regulation 10 the Tribunal is obliged to make an order up to 3 times the deposit to be paid to the Applicant. When considering the Order and level of sanction the Tribunal must have regard to the severity of the breach and any mitigating factors. The deposit was unsecured for a period of over 6 years and at the date of the Hearing had not been returned to the Applicant. In the case of *Jenson v Fappiano* 2015 G.W.D 4-89 in relation to the amount of such an Award under regulation 10 of the Regulations it was noted that a judicial analysis of the nature of the non-compliance was required and a value attached to reflect a sanction which was fair and proportionate and just given the circumstances. It was further noted that the Sheriff said in said case that the value was not the starting point of three times the deposit minus the mitigating factors it was what was fair and proportionate in the exercise of balanced judicial discretion. The Court of Session in *Tenzin v Russell* 2015 Hous. L.R 11 held that any payment in terms of Regulation 10 of the Regulations is the

subject of judicial discretion after careful consideration of the circumstances of the case.

29. In the present application the Tribunal has taken account of the fact that the Respondent is not a professional landlord and has no other rental properties. It has also taken into account that the Respondent does not intend to rent out the property in the future. However, the Tribunal was concerned to note that the property had been rented previously without the deposit being lodged in an approved scheme and that the Respondent had not even read the tenancy agreement. Had she done so she would have been aware of the need to lodge the deposit in an approved scheme. The predicament she finds herself in is therefore entirely of her own making. Furthermore, the Respondent appeared to misunderstand how important it was that a tenant's deposit is placed in a scheme in order that it is protected against the risk of a financial failure on the part of a landlord and that a tenant can challenge through the scheme's adjudication process any proposed deductions from the deposit. The Tribunal considers that whilst this is clearly a serious breach of the Regulations and the Applicant's deposit has been at risk throughout the duration of the tenancy it would not be appropriate to make an award at the top end of the range of awards open to the Tribunal. Equally it would not be appropriate to make an award at the lower end. Accordingly in balancing the circumstances of both parties having heard submissions and in its discretion the Tribunal found the Applicants entitled to an award of two times the initial deposit to the sum of £4000.00.

30. The Tribunal was also satisfied that it would be appropriate in all the circumstances for the Respondent to lodge the deposit in an approved scheme even at this stage in order that the parties can make use of the schemes adjudication service to resolve at least some of the issues that remain in dispute between the parties.

Decision

31. Having taken careful account of the written and oral submissions and being satisfied that it had sufficient information before it to make a decision without the need for a hearing the Tribunal finds the Applicant entitled to an order for payment by the Respondent in the sum of £4000.00 and further orders the Respondent to pay the Applicant's deposit of £2000.00 into an approved tenancy deposit scheme within 30 days of the date of issue of this order.

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.

Graham Harding

**Graham Harding
Legal Member/Chair**

**5 October 2022
Date**