



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/PR/22/2472

**Re: Property at 10 Meadowhead Place, Addiewell, West Lothian, EH55 8PF
("the Property")**

Parties:

Mr Steven Purvis and Miss Jessica Havers, 1 Wynyard Street, Houghton-Le-Spring, Tyne and Wear, DH4 6LS ("the Applicants")

**Mr Duncan Stirling, Flat 2, Parr House, Chalice Close, Poole, Dorset, BH12 0JS
("the Respondent")**

Tribunal Members:

Shirley Evans (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent failed to comply with his duty as a Landlord in terms of Regulations 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") as amended by The Housing (Scotland) Act 2014 (Consequential Provisions) Order 2017 by failing to pay the Applicants' Tenancy Deposit to the scheme administrator of an Approved Tenancy Deposit Scheme grants an Order against the Respondent for payment to the Applicants of the sum of THREE HUNDRED AND SIXTY-TWO POUNDS AND FIFTY PENCE (£362.50) Sterling.

Background

1. This is an Application dated 18 July 2022 for an order for payment for where it is alleged the Respondent has not paid a deposit into an approved scheme under the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"). The Application is made under Rule 103 of the First-tier

Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The Application was accompanied by a copy of a Private Residential Tenancy Agreement between the Applicants and the Respondent, and a copy of a Certificate from Safe Deposits Scotland dated 9 September 2020.
3. On 11 August 2022, the Tribunal accepted the Application under Rule 9 of the Regulations 2017.
4. On 6 September 2022 the Tribunal enclosed a copy of the Application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 21 October 2022.

Case Management Discussion

5. The Tribunal proceeded with the CMD on 21 October 2022 by way of teleconference. Mr Purvis appeared on behalf of both Applicants. Mr McQueenie from Mavor and Company, the Respondent’s Letting Agent appeared on behalf of the Respondent.
6. The Tribunal noted the content of the Private Rented Tenancy Agreement and the Certificate from Safe Deposits Scotland lodged.
7. The Tribunal stated that it had read through the Application. It asked Mr McQueenie to clarify what the Respondent’s position was in relation to the Application. Mr McQueenie explained Mavor and Company acted for the Respondent. He accepted the deposit had been lodged late. At the time, in July- September 2020 when the country was coming out of restrictions, the staff at Mavor and Company were still mainly working from home. There was very limited access to the office. The lodging of the tenants’ deposit of £725 received on 1 July 2020 had been overlooked and as soon as it came to their attention that it had not been lodged, they immediately created an account with Safe Deposits Scotland and lodged the deposit on 9 September 2020. He calculated the deposit was lodged 18 days late. This was an administrative oversight with no intent or malice intended.
8. Mr Purvis explained that he and his partner Miss Havers, the joint Applicant had paid the deposit of £725 on 1 July 2020, but due to works at the Property the tenancy did not actually start until 6 July 2020. Although they had been made aware by Safe Deposits Scotland after the deposit had been lodged that it had been lodged late, they really just wanted to live in the tenancy in peace and not create any issues, so did not raise it with the Respondent at that time. They were concerned when they heard this that they could have lost their deposit. The tenancy ended on 30 June 2022. This was accepted by Mr McQueenie. Mr Purvis advised that at the end of the tenancy Safe Deposits Scotland had dealt with the deposit. Mr McQueenie accepted that

and advised that he had contacted Mr Purvis to explain the position after it came to his attention that the current application had been raised.

Findings in Fact

9. The Applicants entered into a Private Rented Tenancy Agreement with the Respondent commencing on 6 July 2020 to rent the Property. They paid the Respondent the £725 deposit on 1 July 2020 in terms of Clause 11 of the said tenancy agreement.
10. The Respondent did not lodge the deposit within 30 working days of 6 July 2020 into an approved scheme. As soon as the failure to lodge the deposit became apparent the Respondent's letting agent Mavor and Company lodged the Applicants' deposit with Safe Deposits Scotland on 9 September 2020. There was malice or intent to avoid the 2011 Regulations.
11. The deposit was not protected in accordance with the 2011 Regulations for a period of 18 days.
12. The tenancy terminated on 30 June 2022. Safe Deposits Scotland dealt with the deposit under the 2011 Regulations on termination.

Reasons for decision

13. For the purpose of Regulation 9(2) of the 2011 Regulations an application where a landlord has not paid a deposit into a scheme administrator must be made within three months of the tenancy ending. The Tribunal found that the application was made in time. The tenancy terminated on 30 June 2022 and the application was made on 18 July 2022.
14. Regulation 3 (1) and (2) of the 2011 Regulations provides –

“(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.

The Respondent's letting agent on behalf of the Respondent accepts the deposit was not paid until after the statutory 30 working days. It was not paid into a scheme until 18 days after it should have been.

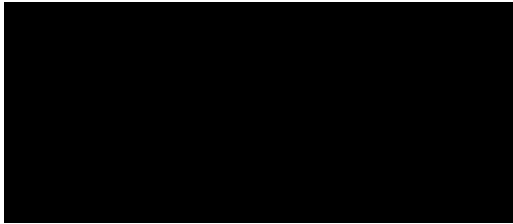
15. The 2011 Regulations were intended, amongst other things to put a landlord and a tenant on equal footing with regard to any tenancy deposit and to provide a mechanism for resolving any dispute between them with regard to the return of the deposit to the landlord or tenant or divided between both, at the termination of a tenancy.
16. The amount to be paid to the Applicants is not said to refer to any loss suffered by the Applicants. Accordingly, any amount awarded by the Tribunal in such an application cannot be said to be compensatory. The Tribunal in assessing the sanction level has to impose a fair, proportionate and just sanction in the circumstances, always having regard to the purpose of the 2011 Regulations and the gravity of the breach. The Regulations do not distinguish between a professional and non-professional landlord such as the Respondent. The obligation is absolute on the landlord to pay the deposit into an Approved Scheme.
17. In assessing the amount awarded, the Tribunal has discretion to make an award of up to three times the amount of the deposit, in terms of Regulation 10 of the 2011 Regulations.
18. The facts were not disputed. The Tribunal considered the Respondent had admitted his failure to comply with the 2011 Regulations. The Tribunal accepted that this was a genuine mistake and that there was no intention to avoid the 2011 Regulations. The Respondent's letting agent took immediate steps to comply with the 2011 Regulations as soon as the oversight became apparent. The agent had provided a credible explanation as to why the oversight had happened. The actions and processes of the Respondent's agent demonstrated that the Respondent had neither disregarded or ignored his duties under the 2011 Regulations. The letting agents took the Respondent's duties seriously and were apologetic for the failure.
19. Despite the Tribunal being satisfied that the Respondent had failed to comply with his duties under Regulations 3 (1) of the 2011 Regulations, the purpose of the 2011 Regulations had not been defeated. The deposit was paid, albeit 18 days late into an approved scheme by his letting agent and the deposit was protected through the remainder of the tenancy. The Applicants had not been inconvenienced by the late lodging. The Tribunal accepted that they had been concerned when they found out it had been lodged late. Both parties however had been given the opportunity to make their respective claims on the deposit at the end of the tenancy through Safe Deposits Scotland in terms of the 2011 Regulations.
20. In all the circumstances, the Tribunal considered that a fair, proportionate and just amount to be paid to the Applicants was half the amount of the deposit.

Decision

21. The Tribunal accordingly made an Order for Payment by the Respondent to the Applicants of £362.50.

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.



Legal Member

22 October 2022

Date