



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulations 3 and 10 of the Tenancy
Deposit Scheme (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/22/2501

**Re: Property at 46 F Broad Street, Frazerburgh, Aberdeenshire, AB43 9AH (“the
Property”)**

Parties:

**Mr David Mack, Light House Hostel, 20 Gilmore Place, Edinburgh, EH3 9NQ (“the
Applicant”)**

**William Maitland Ltd, 23 Cross Street, Fraserburgh, AB43 9ET (“the
Respondent”)**

Tribunal Members:

Alison Kelly (Legal Member)

Decision (in absence of the Applicant)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Application should be refused.**

Background

The Applicant lodged an application on the 25th July 2022 under Rule 103 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) seeking a sum under the Tenancy Deposit (Scotland) Regulations 2011.

Lodged with the application were:

1. Email correspondence between the Applicant and Letting Protection Scotland Ltd (“LPS”) confirming the deposit was registers with them on 9th January 2022 but not paid to them until 9th March 2022, which they confirmed was the date it was protected from
2. Email correspondence with the Applicant regarding wifi

On 27th July 2022 the Tribunal wrote to the Applicant seeking a copy of the Tenancy Agreement and confirmation of who the Landlord actually is, an address for the landlord, confirmation of the start date of the tenancy, the date of payment of the deposit, and confirmation of whether the tenancy continued and if not the end date.

The papers were served on the Respondent by Sheriff Officers on 26th July 2022.

A copy of the Tenancy Agreement was produced by the Applicant. He did not answer the remainder of the questions asked and a series of emails then went back and forth between the Applicant and the Tribunal. The Tribunal chose to put the case forward to a Case Management Discussion.

On 14th October 2022 the Applicant sent an email to the Tribunal confirming his new address.

On 30th November 2022 the Respondent sent an email to the Tribunal lodging a copy of a document from LPS showing a bulk payment made by the Respondents on 31st January 2022. The document also showed that the Scheme awaited the Applicant's response in relation to repayment of the deposit on termination of the tenancy, and that the deadline given to the Applicant had passed.

Case Management Discussion

The Case Management Discussion ("CMD") took place by teleconference. The Applicant did not dial in. The Clerk telephoned him on the number held on the Tribunal's system and left him a message. The Chairperson waited until 2.15pm, at which time he had not joined the call, and she therefore proceeded without him. The Respondent was represented by John Maitland, Director.

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

Mr Maitland referred to the document he had lodged. He said that he had telephoned LPS and asked them why there had been a delay in allocating the payment to the Applicant's deposit records. They explained that because he had made one payment covering the deposit for four properties they had not been able to allocate it to the Applicant until 9th March 2022. They advised him to make individual payments for each property in future.

With regard to Rule 24, and in terms of the Tribunal's overriding objective to deal with proceedings justly, as set out in Regulation 2 the Tribunal felt that the facts were sufficiently clearly stated for a decision to be made in the absence of the Applicant.

Findings In Fact

1. The parties entered in to a tenancy agreement for the property;

2. The tenancy commenced on 5th January 2022;
3. The Applicant paid a deposit of £480 to the Respondent on 11th January 2022;
4. The Respondent paid the deposit to LPS on 31st January 2022;
5. This was in the 30 working day time period laid down by the Regulations;
6. LPS did not allocate the deposit to the Applicant's account until 9th March 2022;

Reasons For Decision

The Application has been brought under the Tenancy Deposit (Scotland) Regulations 2011, based on an alleged failure of the Respondents of their duties under Regulation 3, and seeking a payment in terms of Regulation 10.

Regulation 3 is 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.

Regulation 10 is as follows:

10. If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal—

(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 First-tier Tribunal 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.

Regulation 3 imposes an obligation on a landlord who has received a tenancy deposit in connection with a relevant tenancy and the obligation is to place it in to an approved scheme within 30 working days of the beginning of the tenancy. In this case it is clear that the Respondent complied with that obligation. The tenancy began on 5th January 2022 and the Deposit was paid to LPS on 31st January 2022. LPS appear not to have allocated the money to the Applicant until 9th March 2022, and Mr Maitland provided an explanation for that, however the money was still with LPS during that period. There has been no breach of the Regulations by the Respondent.

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.

Alison Kelly

Legal Member/Chair

12 December 2022
Date