



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

**Chamber Ref: FTS/HPC/PR/22/3013**

**Re: Property at 54 Ladywell Avenue, Dundee, DD1 2LB (“the Property”)**

**Parties:**

**Mr Samuel Pearson, 6 Lawson Crescent, South Queensferry, Edinburgh, EH30  
9JE (“the Applicant”)**

**Mr John Aird, School Cottage, Barnraig Street, Buckhaven, Fife, KY8 1JE  
 (“the Respondent”)**

**Tribunal Members:**

**Ruth O’Hare (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined to make an order for payment against the Respondent in  
the sum of Four hundred pounds (£400) Sterling**

**Background**

- 1 The Applicant applied to the Tribunal seeking an order for payment as a result of the Respondent’s failure to lodge his deposit in an approved tenancy deposit scheme and provide the prescribed information.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 9 November 2022.
- 3 The application paperwork was served upon the Respondent by Sheriff Officers. He subsequently responded to the Tribunal by email with copy bank statements, excerpt Whatsapp messages between the parties and

photographs. He stated that he wished to counterclaim for £1000 for costs that had been incurred at the end of the tenancy however he was advised by the Tribunal that as there was no provision for counterclaims under the Tribunal procedural rules he would have to pursue a separate Tribunal application.

### **The Case Management Discussion**

- 4 The Case Management Discussion took place on 9 November 2022 by teleconference. The parties were both in attendance.
- 5 The Legal Member explained the purpose of the Case Management Discussion and the legal test to be applied. She asked the parties to address her on their respective positions. Their submissions are summarised below. For the avoidance of the doubt, this is not a verbatim account of what was discussed at the Case Management Discussion but a summary of those matters relevant to the Tribunal's determination of the matter.
- 6 The Applicant explained that the situation was quite simple. He had stayed in the property between 11 September 2021 and 10 June 2022. At the end of the tenancy he did not receive his deposit back. The Respondent had given reasons for this in emails and text messages which the Applicant was happy to dispute, however the application had been made as a result of the Respondent's failure to lodge the deposit in an approved deposit scheme. The Applicant confirmed that he sought the maximum award of three times the deposit. It had affected his savings and his ability to pay a deposit for a new property. He reiterated again that he had received no deposit back from the Respondent.
- 7 The Respondent addressed the Tribunal. He explained that the property is a five bedroom property. He would give tenants a choice as to whether their deposits were placed in a deposit scheme. If they did not wish the deposit to be put into a scheme he would take £200 by way of a deposit. He had done so for the Applicant's tenancy and the Applicant was content with this. The Respondent explained that the Applicant had only given nine days notice prior to leaving the property. The Respondent explained that the tenancy agreement required payment of rent of £350 per month however the Applicant had only paid £320. In response to questions from the Tribunal the Respondent confirmed that the deposit had been taken as security for any sums due at the end of the tenancy. The reason he didn't lodge all deposits in a deposit scheme was because many of his tenants were students and would move on after four or five months. It took quite a bit of time to go through the deposit scheme process therefore there would be delays in the tenant getting their deposit back. He thought there was an exception to the requirement to lodge a deposit with a scheme hence why he had taken this approach. The Respondent was of the view that a deposit of £200 was reasonable in the circumstances. The Respondent explained that the Applicant was not a "team

player” and the property had required some work before it could be relet therefore he had incurred costs. Another two tenants didn’t get their deposits back for the same reason.

- 8 The Applicant explained that the reasons the Respondent had set out for withholding the deposit were unfounded and irrelevant. He stated again the impact that the situation had had on his savings. He had struggled to save for a new deposit. There had been other issues during the term of his tenancy. As a result he was seeking the maximum award.
- 9 The Respondent explained that the Applicant had chosen to move out and had given only nine days notice. The Applicant had decided to leave. He could have stayed in the property if he wished.
- 10 The Case Management Discussion concluded and the Legal Member confirmed that the decision would be issued in writing.

### **Relevant Law**

- 11 The relevant law is contained with the Housing (Scotland) Act 2006 and the Tenancy Deposit Scheme (Scotland) Regulations 2011. Section 120 of the 2006 Act provides as follows:-

*“120 Tenancy deposits: preliminary*

*(1) A tenancy deposit is a sum of money held as security for—*

*(a) the performance of any of the occupant's obligations arising under or in connection with a tenancy or an occupancy arrangement, or*

*(b) the discharge of any of the occupant's liabilities which so arise.*

*(2) A tenancy deposit scheme is a scheme for safeguarding tenancy deposits paid in connection with the occupation of any living accommodation.*

- 12 The 2011 Regulations provide 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.”*

*“9.—(1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.*

*(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.”*

*“10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—*

*(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 sheriff 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.”*

## **Findings in Fact**

- 13 The Applicant entered into a tenancy agreement with the Respondent dated 20 July 2021. The tenancy commenced on that same date.
- 14 The term of the tenancy was from 10 September 2021 until 10 June 2022.
- 15 In terms of the said tenancy agreement the Applicant agreed to make payment of a tenancy deposit in the sum of £200.
- 16 The Applicant paid the Respondent £200 at the commencement of the tenancy.
- 17 The Respondent failed to pay the deposit into an approved deposit scheme within the statutory timescale.
- 18 The Respondent did not provide the prescribed information to the Applicants regarding the tenancy deposit scheme.
- 19 The failure to lodge the deposit was due to a misunderstanding on the Respondent's part regarding the definition of a tenancy deposit.

- 20 The Respondent retained the tenancy deposit following the termination of the tenancy.
- 21 The Respondent also failed to lodge at least two deposits received from tenants at the property and failed to return the deposits at the end of the tenancy.

### **Reasons for Decision**

- 22 The Tribunal determined the application having regard to the application paperwork, the written representations from the parties and the verbal submissions at the Case Management Discussion. The Tribunal was satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. It was noted that the substantive facts of the matter were agreed.
- 23 The 2011 Regulations specify clear duties which are incumbent on landlords in relation to tenancy deposits. Regulation 3 requires a landlord to pay any deposit received in relation to a relevant tenancy to an approved tenancy deposit scheme within thirty working days of the beginning of the tenancy. The deposit must then be held by the scheme until it can be repaid in accordance with the requirements of the Regulations following the end of the tenancy.
- 24 It was a matter of agreement between the parties that the tenancy had commenced on 10 September 2021, that the Applicant had paid a deposit of £200, and that the Respondent had not paid the deposit into an approved tenancy deposit scheme. The Respondent had also failed to provide the prescribed information to the Applicant regarding the scheme in which their deposit had been placed.
- 25 The Respondent was clearly of the view that the arrangement he had put in place for tenants, whereby he offered a lower deposit in exchange for not lodging a deposit in a tenancy deposit scheme, was lawful. The tenancy agreement between the parties made reference to the payment of £200 as a first instalment of rent payable on the date of entry. Whilst there may be circumstances where a payment of advanced rent at the commencement of a tenancy which is held and applied to the last months rent will not fall under the definition of a tenancy deposit, the Respondent's treatment of the payment of £200 suggested that was not in fact the case here. It was clear from the Respondent's submissions at the Case Management Discussion that he had taken the payment as security for any costs due at the end of the tenancy by the Applicant. This included costs incurred to carry out work to the property. The Respondent had conceded that he had also held back deposits for two other tenants for this reason. Accordingly the Tribunal ultimately concluded

that the payment had been taken as security for the Applicant's performance of his obligations under the lease and was therefore a tenancy deposit for the purpose of the 2011 Regulations. The Respondent was therefore in breach of Regulation 3.

- 26 Regulation 9 provides that any tenant may apply to the Tribunal for an order where the landlord has not complied with the duty under Regulation 3. Further, under Regulation 10 in the event of a failure to comply, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. Accordingly having been satisfied that the Respondent had failed to comply, the Tribunal then had to consider what sanction to impose having regard to the particular facts and circumstances of the case. Whilst the Applicant had given a view on an appropriate level of sanction ultimately this was at the discretion of the Tribunal.
- 27 The Tribunal considered the requirement to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach. Ultimately this was not a situation where the Tribunal considered an award at the higher end of the scale was merited. The Tribunal accepted the Respondent's explanation for not lodging the deposit, and not providing the relevant information, timeously. It was unfortunate that he had failed to fully comprehend his obligations under the 2011 Regulations but the Tribunal found his submissions that he believed he was doing the right thing to be credible.
- 28 The Tribunal however noted that, as the deposit had not been lodged with a deposit scheme, the Applicant had not benefited from the security that came with the scheme when the tenancy ended. He had not had access to the independent dispute resolution mechanism that could have adjudicated on the dispute over the retention of the deposit by the Respondent. Instead the Respondent had unilaterally decided what sums to retain. The Tribunal had cognisance of the fact that he had done similar for two other tenants. The Tribunal further took into account the difficulties the Applicant had faced with making payment of the deposit for his new property which would have caused him significant stress.
- 29 The purpose of Regulation 10 is to penalise landlords to ensure they comply with the duty to protect and safeguard tenancy deposits. The provisions of Regulation 10 leave no discretion where a landlord is found to have failed to comply and permit an award of up to three times the deposit where a finding of breach is made. The Respondent is clearly an experienced landlord and should be well aware of his statutory obligations under the 2011 Regulations. The mitigating circumstances outlined by him at the Case Management Discussion were not an excuse, albeit they did give some indication as to why the deposit had not been lodged. The Respondent would benefit from taking

some independent legal advice regarding tenancy deposits to ensure compliance in future.

- 30 Accordingly balancing the competing factors in the particular facts and circumstances of this case, the Tribunal considered that a sanction in the sum of £400 would be appropriate, being a sum equivalent to twice 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.**

# R O'Hare

9 November 2022

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Legal Member/Chair

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Date