



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

Chamber Ref: FTS/HPC/PR/22/3701

**Re: 40 Stewart Terrace, South Queensferry, Edinburgh EH30 9RL (“the
Property”)**

Parties:

**Agata Galawska, 40 Stewart Terrace, South Queensferry, Edinburgh EH30 9RL
 (“Applicant”)**

**Granton Information Centre, 134-138 West Granton Road, Edinburgh EH5 1PE
 (“Applicant’s Representative”)**

Angela Geraghty, 15 Bennachie Way, Dunfermline KY11 8JA (“Respondent”)

**Landlord Specialist Services Scotland, 5 South Charlotte Street, Edinburgh
EH2 4AN (“Respondent’s Representative”)**

**Tribunal Members:
Joan Devine (Legal Member)**

Decision :
**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Respondent should pay to the Applicant the sum
of £600**

Background

1. The Applicant made an application in Form G ("Application") dated 6 October 2022 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("Rules") stating that the Respondent had failed to timeously lodge a tenancy deposit in an appropriate scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("2011 Regulations"). The documents produced to the Tribunal by the Applicant were:
 - A private residential tenancy agreement (“PRT”) between the Applicant and the Respondent which commenced on 21 January 2022.

- A copy email from Edinburgh Women's Aid dated 21 October 2022 which stated that the three deposit schemes had been contacted by telephone and none had a deposit registered for the Applicant at the Property.
2. A copy of the Application and notification of a Case Management Discussion ("CMD") fixed for 7 February 2023 was given to the Respondent by Sheriff Officer on 1 December 2022. In advance of the CMD the Respondent's Representative lodged a written submission. In response to a request from the Tribunal for further information (a) the Applicant lodged an excerpt from a tenancy agreement entered into by her and her husband with the Respondent, copy emails and a screenshot showing a payment of £1500 being made on 16 September 2019; and (b) the Respondent lodged an excerpt from a tenancy agreement entered into by the Applicant and her husband with the Respondent and a copy of certificate from Safe Deposits Scotland showing that a deposit of £750 relating to the Property had been received on 5 December 2022.

Case Management Discussion ("CMD")

3. A CMD took place on 7 February 2023 by conference call. The Applicant was represented by Natasha McCourt of the Applicant's Representative. The Respondent was in attendance and was represented by Jeff Livingston of the Respondent's Representative.
4. The Tribunal noted that a PRT had been in place between the Applicant and her husband on the one part and the Respondent on the other part prior to the Applicant entering into a PRT in her sole name with the Respondent. The Parties confirmed that was correct and said that the previous PRT had not been formally terminated. Parties were however agreed that the PRT produced which commenced on 21 January 2022 was the PRT relevant to the application. Parties were also agreed that a deposit of £750 had been paid by the Applicant in terms of the previous PRT and it had been transferred to the PRT which commenced on 21 January 2022. The Tribunal asked if the tenancy was ongoing. Mr Livingston said that a notice to leave had been served and that an application for an eviction order had been made. A date was awaited for a CMD.
5. The Tribunal noted that Parties were agreed that the PRT between the Applicant and the Respondent had commenced on 21 January 2022 and the deposit of £750 was transferred to the PRT on or about that date. The Tribunal noted that the obligation on the Respondent in terms of the Rules was to lodge the deposit in an approved scheme within 30 working days of the beginning of the tenancy which was 4 March 2022. The certificate from Safe Deposits Scotland said that the deposit was not lodged until 5 December 2022 which was some 9 months late. Parties confirmed that this was agreed.

6. The Tribunal noted the terms of section 10 of the 2011 Regulations and said that as the salient facts were agreed, the only question for the Tribunal was the amount of the award to be made in terms of section 10. Parties confirmed that was agreed.
7. On behalf of the Applicant Ms McCourt submitted that the breach was serious and that the maximum award of £2250 should be made. She noted that the Respondent had said that she lodged the deposit as soon as she became aware of the need to do so but Ms McCourt pointed to an email from the Applicant to the Respondent dated 26 July 2022 and an email from her to the Respondent dated 31 August 2022 which referred to the requirement to lodge the deposit in an approved scheme. Ms McCourt also referred to relations between the Parties becoming strained in recent months and an incident on 15 August 2022 when the Respondent attended the Property and was abusive towards the Applicant. Around this time Ms McCourt said that the Respondent also sought to increase the rent by £375 per month.
8. On behalf of the Respondent Mr Livingston said that the delay in lodging the deposit was due to the Respondent's personal circumstances following her separation from her husband. He said that the Respondent suffered stress at that time. He said that the award made should be minimal. The Respondent told the Tribunal that following the separation from her husband she had moved out of the matrimonial home. Her intention was to move into the Property but she did not have vacant possession. She said that she was living in rented accommodation. The Respondent said that the day after she separated from her husband her aunt was diagnosed with cancer. She said that she had not been thinking clearly while these events were ongoing. The Respondent said that she did not own any other property which she let to third parties and that she had been unaware of the requirements of the 2011 Regulations.
9. The Tribunal expressed the view that it had sufficient information to proceed to make a decision without the need for a further Hearing. The Parties stated that they were content for the Tribunal to make a decision on the basis of the information presented.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement which commenced on 21 January 2022.
2. The Applicant paid to the Respondent a deposit of £750 on or about 21 January 2022.

3. The deposit became protected by Safe Deposits Scotland on 5 December 2022.
4. The deposit was not paid to the administrator of an approved scheme in compliance with the timescales set out in Regulation 3 of the 2011 Regulations.
5. The deposit of £750 was paid into an approved scheme 9 months outwith the timescales stated in the 2011 Regulations.
6. At the time of receipt of the deposit from the Applicant, the Respondent was unaware of the need to lodge the deposit in an approved scheme in accordance with the 2011 Regulations.

Reasons for the Decision

10. Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme administrator of an approved scheme within 30 working days of the beginning of the tenancy, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. The Tribunal was satisfied that the Respondent did not lodge the deposit in accordance with the timescales required by the 2011 Regulations. The deposit was lodged some 9 months late.
11. The amount to be awarded is a matter for the discretion of the Tribunal having regard the factual matrix of the case before it. The Tribunal considered the comments of Sheriff Ross in *Rollett v Mackie* UTS/AP/19/0020. At para 13 and 14 he considered the assessment of the level of penalty and said:

"[13] In assessing the level of a penalty charge, the question is one of culpability, and the level of penalty requires to reflect the level of culpability. Examining the FtT's discussion of the facts, the first two features (purpose of Regulations; deprivation of protection) are present in every such case. The question is one of degree, and these two points cannot help on that question. The admission of failure tends to lessen fault: a denial would increase culpability. The diagnosis of cancer also tends to lessen culpability, as it affects intention. the finding that the breach was not intentional is therefore rational on the facts, and tends to lessen culpability.

[14] 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. None of these aggravating factors is present."

12. The Tribunal noted that the Respondent was not an experienced landlord, that she admitted that there had been a breach and that she had, belatedly, placed the deposit in an approved scheme. The explanation given for the failure to comply with the 2011 Regulations was lack of awareness of the Regulations and difficult personal circumstances when she did become aware of the Regulations. Whilst ignorance of the law is not an excuse for non-compliance, the Tribunal accepted the Respondent's explanation for non-compliance and was of the view that there were no aggravating factors present in this case of the sort described in *Rollett v Mackie*.
13. Having regard to factors put forward by both parties the Tribunal determined that the sanction should be £600 in the particular facts and circumstances of this case. This figure is 80% of the deposit.

Decision

The Tribunal granted an Order for payment of £600 in terms of Regulation 10(a) of the 2011 Regulations.

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.

J. Devine

Legal Member:

Date: 7 February 2023