



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

**Chamber Ref: FTS/HPC/PR/20/2485**

**Re: Property at 27 Culzean Crescent, Kilmarnock, KA3 7DR (“the Property”)**

**Parties:**

**Miss Nicola Paton, 70 Macnaughton Drive, Kilmarnock, KA3 7ND (“the Applicant”)**

**Mrs Maureen Menzies, 97 John Finnie Street, Kilmarnock, KA1 1BG (“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 in the sum of £350.00.**

**Background**

1. By application dated 24 November 2020 the Applicant applied to the Tribunal for an order in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicant complained that the Respondent had not lodged the deposit she paid at the commencement of her tenancy of the property in an approved scheme within the prescribed period. The Applicant submitted a copy of the tenancy agreement and correspondence from Safe Deposits Scotland in support of her application together with correspondence with the letting agents, Property Matters, Kilmarnock.
2. By Notice of Acceptance dated 26 January 2021 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.

3. Intimation of the Case Management Discussion was given to the Applicant by post on 8 February 2021 and to the Respondent by Sheriff Officers on 9 February 2021.
4. The Respondent's representatives, Property Matters, Kilmarnock submitted written representations by email dated 1 March 2021.

### **The Case Management Discussion**

5. A Case Management Discussion was held by teleconference on 10 March 2021. The Applicant attended in person. The Respondent did not attend but was represented by Ms Nicole Carr of Property Matters, Kilmarnock. She was supported by Ms Gillian Cameron of the same company.
6. Ms Carr explained to the Tribunal that the Applicant's deposit of £475.00 had been paid by her in cash at the commencement of the tenancy on 30 January 2020. On the same day the deposit had been registered but not paid to Safe Deposits Scotland. Ms Carr went on to say that the cash had been placed in a drawer and had remained there until another member of staff, Mr John Dolan had discovered it on 24 March 2020 when another cash payment had been made by another tenant. At that point Mr Dolan had paid the cash into the company's bank account and transferred it to Safe Deposits Scotland.
7. It was agreed that the Applicant's deposit had not been protected for a period of 38 working days and was therefore 8 working days late in being placed in an approved Tenancy Deposit scheme.
8. Ms Carr indicated to the Tribunal that although the deposit was late in being lodged the statutory information required by Regulation 42 of the 2011 regulations had been sent to the Applicant after the deposit had been paid to Safe Deposits Scotland.
9. Ms Carr sought to argue that the application had been made by the Applicant because of a dispute over a bed however the Tribunal explained that its role was to look only at whether there had been a breach of the regulations and if there had to consider what would be an appropriate sanction to impose.
10. Ms Carr confirmed that the fault in not lodging the deposit timeously lay with her company and that any sanction imposed by the Tribunal would be met by Property Matters and not by the Respondent. She advised the Tribunal that this was the first occasion that the company had faced an application for a breach of the 2011 Regulations.
11. It was accepted that the Applicant's tenancy ended on 10 September 2020 and that the application had been made on 24 November 2020 and was therefore timeous.
12. For her part the Applicant submitted that contrary to what had been said by Ms Carr she had not received the prescribed information from Property Matters

after the deposit had been lodged. She said she had only received an email from Safe Deposits Scotland which she had submitted to the Tribunal. She said she had received confirmation of the deposit being lodged from Property Matters in an email dated 13 August 2020 after she had intimated her intention to vacate the property. The Applicant submitted that a sanction of between one and two times the deposit would be appropriate.

13. For her part Ms Carr attempted to find an email sent to the Applicant with the prescribed information required in terms of Regulation 42 of the 2011 Regulations but despite the Tribunal giving her some time to locate it was unable to do so.

### **Findings in Fact and Law**

14. The parties entered into a Private Residential Tenancy agreement that commenced on 30 January 2020 at a rent of £475.00 per calendar month.
15. The Applicant paid a deposit of £475.00 in cash to the Respondent's letting agents Property Matters Ltd, Kilmarnock at the commencement of the tenancy.
16. Although the deposit was registered with Safe Deposits Scotland on 30 January 2020 it was not paid into the scheme until 24 March 2020 a period of 38 working days.
17. The Respondent relied upon her letting agents Property Matters Ltd to lodge the deposit in an approved scheme.
18. The Applicant's tenancy ended on 10 September 2020.
19. The Applicant applied to the Tribunal for an order under the 2011 Regulations on 24 November 2020.
20. The Applicant received confirmation from Safe Deposits Scotland that her deposit had been lodged in an approved scheme by email dated 31 March 2020.
21. The Applicant received an email from Ms Carr of Property Matters dated 13 August 2020 confirming her deposit was lodged with Safe Deposits Scotland.
22. The Respondent failed to lodge the Applicant's deposit in an approved Tenancy Deposit Scheme within 30 working days.
23. The Respondent was in breach of Regulation 3 of the 2011 Regulations.
24. The Applicant's application to the Tribunal was timeous in terms of Regulation 9(2) of the 2011 Regulations.

## **Reasons for Decision**

25. The Tribunal found that the deposit having been paid to the Respondent's agents on 30 January 2020 it ought to have been paid into an approved Tenancy Deposit Scheme within 30 working days. It was not and the Respondent's agents retained the deposit for 38 working days. It also appeared to the Tribunal that they had not complied with Regulation 3 in that they had not sent to the Applicant the prescribed information required in terms of Regulation 42.
26. Where a landlord is in breach of Regulation 3 of the 2011 Regulations and a tenant makes an application to the Tribunal in terms of regulation 9 then in terms of Regulation 10 the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the deposit.
27. Any award under Regulation 10 requires to reflect a sanction which is fair and proportionate and just given the circumstances (*Jensen v Fappiano* 2015 GWD 4-89). In *Tenzin v Russell* 2015 Hous. L.R. 11 it was held that any payment in terms of Regulation 10 is the subject of judicial discretion after careful consideration of all the circumstances of the case.
28. In reaching its decision the Tribunal has carefully considered the written and oral submissions of the parties and agents. The Tribunal has taken account of the fact that the Respondent relied completely on her agents Property Matters Limited who have acknowledged will meet any sanction imposed by the Tribunal. The Tribunal expects a high standard of professionalism in the Respondent's agents' dealings with tenants' funds. The Tribunal was concerned that tenants' funds could be placed in a drawer and effectively forgotten about for a period of almost two months. However, the Tribunal did not think that the Respondent or her agents' failures amounted to a wilful disregard for the regulations and furthermore the period during which the Applicant's deposit was unprotected was short. The Tribunal was concerned that it appeared that the Respondent's agents had also omitted to send out the information prescribed in Regulation 42 but nevertheless the Tribunal was of the view that the breach of the regulations by the Respondent would not merit a sanction at the upper end of the scale and in the circumstances taking everything into account determined that an award at the lower end of the range in the sum of £350.00 was appropriate.

## **Decision**

29. The Tribunal being satisfied that it had sufficient information before it to make a decision finds the Applicant entitled to an order for payment by the Respondent in the sum of £350.00.

## **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**  
**Legal Member/Chair**

**10 March 2021**  
**Date**