



**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/20/2517

**Re: Property at 1 Heatherstacks Farm Cottage, Forfar, DD8 3RR (“the
Property”)**

Parties:

**Mr Nicholas Stacey, 1 Heatherstacks Farm Cottage, Forfar, DD8 3RR (“the
Applicant”)**

**Captain HL Gray - Cheapes 1986 Settlement, Millside, Brathinch, Brechin, DD9
7QZ (“the Respondent”)**

Tribunal Members:

Lesley Ward (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) being satisfied that the Respondent as landlord of the property at 1
Heatherstacks Farm Cottage, Forfar, DD8 3RR (“the Property”) did not comply
with a duty in Regulation 3 of The Tenancy Deposit Schemes (Scotland)
Regulations 2011, makes an order for the Respondent to pay to the Applicant
the sum of one hundred pounds (£100).**

1. This was a case management discussion ‘CMD’ in connection with an application in terms of Rule 103 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 ‘the rules’ for an order for a penalty in terms of Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, ‘the regulations’. The application was made by Mr Nicolas Stacey on 30

November 2020. The applicant attended the CMD. The respondent was represented by Mr Charles Gow.

2. The tribunal had before it the following copy documents: -

- (1) Application dated 30 November 2020 and received by the tribunal on 3 December 2020.
- (2) Tenancy agreement dated 26 March 2020.
- (3) Respondent's submission dated 16 February 2021.
- (4) Receipt for tenancy deposit dated 1 May 2020.
- (5) Respondent's customer ledger for payments by applicant.
- (6) Safe Deposits Scotland certificate dated 6 November 2020.

Discussion

3. It was agreed that the applicant paid the deposit on 31 March 2020, the tenancy started on 1 May 2020, the applicant moved into the property on 1 June 2020, but the deposit was not lodged until 6 November 2020. The applicant continues to reside in the property.

The applicant's position.

4. The applicant was concerned that his deposit was unprotected for several months. He had the receipt, but it was his view that if the landlord had gone bust his money would have been lost.

The respondent's position.

5. The deposit was not lodged timeously due to an oversight. The usual practice is for the deposit to be passed to the accounts department. The respondent was due to move in to the property on 1 May 2020 but was unable to take entry until 1 June 2020 due to covid. The office also administration required to work from home at this time and Mr Gow did not have the usual contact with his bookkeeper and account team. Part of the team were working from home. As a result of both matters, the lodging of the deposit was overlooked. The deposit should have been lodged by 16 June 2020. The applicant's deposit came to light at the end of October 2020 when 2 other deposits were being lodged. It was lodged immediately. It was therefor lodged almost 5 months late.
6. As far as the other matters contained in regulation 42 of the regulations, it was Mr Gow's position that the lease gave details of the deposit scheme dues and the landlord registration details. Mr Gow stated that the respondent are a well-established and reputable landlord with over 20 properties and they are fully aware of their obligations. The applicant has not been prejudiced by the breach and his deposit was no more at risk before it was lodged than afterwards. When the oversight was noticed it was quickly rectified.

7. Findings in fact

- The respondent is the owner of the property.
- The applicant rented the property from the respondent from 1 May 2020 until present.
- The applicant paid a deposit of £650 to the respondent on 6 February 2020 as his landlord.
- The deposit was not lodged into an approved scheme within 30 working days of 1 May 2020.
- The deposit was lodged late, on 6 November 2020.

Reasons

8. This was a breach of the regulations as the respondent's failed to lodge the deposit into a scheme within 30 working days. This was due to the respondent's oversight. The office was partly closed due to the pandemic and the respondent did not have the usual opportunity to liaise with their accounts department.
9. The tribunal reviewed all of the recent cases regarding tenancy deposit schemes and noted that in the case of *Kirk-v-Singh* 2015 SLT (Sh Ct) 111 sheriff Jamieson was mindful of the need to:-

proceed to impose a sanction which is "fair, proportionate and just having regard to the seriousness of the noncompliance.

10. The tribunal considered this to be a minor breach. The breach was not wilful and there has been no prejudice to the applicant as the deposit has been lodged and the applicant continues to live in the property. Once the respondent became aware of her oversight, they lodged the deposit. The respondent is an experienced landlord and the other duties in regulation 42 were complied with. The tribunal was satisfied that it has sufficient information before it to make a decision and the procedure had been fair. Accordingly, the tribunal decided a penalty of £100 was fair, proportionate and just in all of the circumstances.

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.

Lesley Ward

Lesley A Ward Legal member.

3 March 2021