



**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 as amended by The Tenancy Deposit Schemes (Scotland) Amendment Regulations 2019. (“the Regulations”).**

**Chamber Ref: FTS/HPC/PR/21/0794**

**Re: Property at 640 King Street, Aberdeen, AB24 1SN (“the Property”)**

**Parties:**

**Miss Samantha Irvine, 88 Summerhill Drive, Aberdeen, AB15 6TZ (“the Applicant”)**

**Mr Douglas Matheson, Smiddyboyne Farmhouse, Banff, AB25 2LN (“the Respondent”)**

**Tribunal Members:**

**Martin McAllister (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the sum of Seven Hundred and Fifty Pounds (£750) to the Applicant.**

**Background**

- 1. The Tribunal received an application from the Applicant dated 23<sup>rd</sup> March 2021 seeking payment of a sum in compensation under regulation 10(a) of the Regulations. The Respondent made written representations by email dated 10<sup>th</sup> May and 6<sup>th</sup> June 2021.**

2. A case management discussion was held on 7<sup>th</sup> June 2021 which was continued to allow clarification of the amount of tenancy deposit held in an approved tenancy deposit scheme.
3. A case management discussion was held on 7<sup>th</sup> July 2021. Both parties participated. It was held by audio conferencing. The Legal Member set out suggested protocols for the case management discussion and he also explained its purpose.
4. The Tribunal had regard to the following documents:
  - i) Application dated 23<sup>rd</sup> March 2021;
  - ii) Representations by Respondent dated 10<sup>th</sup> May and 6<sup>th</sup> June 2021;
  - iii) Private Residential Tenancy Agreement dated 11<sup>th</sup> November 2020;
  - iv) Email exchanges between Applicant and Respondent.
  - v) Letter from Letting Protection Service Scotland to Applicant dated 1<sup>st</sup> February regarding a deposit of £200.
  - vi) Receipt from Respondent's Representative dated 5<sup>th</sup> November 2019 in respect of the deposit paid;
  - vii) Redacted part of a bank statement.
  - viii) Copy of Applicant's notice of termination of lease dated 11<sup>th</sup> February 2021.
  - ix) Email from The Letting Protection Service Scotland confirming that the sum of £295 was deposited and protected under the scheme from 12<sup>th</sup> February 2021.

## 5. The Law

### The Tenancy Deposit Schemes (Scotland) Regulations 2011

---

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.

9. (1) A tenant who has paid a tenancy deposit may apply to the sheriff 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.

---

## **Case Management Discussion**

### **Matters Agreed Between the Parties**

- 6. The lease terminated on 11<sup>th</sup> March 2021.**
- 7. The commencement of the tenancy was 11<sup>th</sup> November 2020.**
- 8. The tenancy deposit amounting to £495 was received by the Respondent on 11<sup>th</sup> November 2020.**
- 9. £200 was lodged with an approved tenancy deposit scheme on 29<sup>th</sup> January 2021.**
- 10. £295 was lodged with an approved tenancy deposit scheme on 12<sup>th</sup> February 2021.**

### **Respondent's Position**

- 11. Mr Matheson said that the adjudication process of the tenancy deposit scheme is being utilised because he is seeking retention of the deposit because of certain matters.**

**12. Mr Matheson accepted that the tenancy deposit should have been paid into an approved tenancy deposit scheme by 23<sup>rd</sup> December 2020.**

**13. Mr Matheson's written representations refer to issues outwith his responsibility to lodge the tenancy deposit scheme with an approved scheme. It refers to the Applicant failing to give adequate notice and to arrears of rent, the condition of the Property and issues about the tenant's failure to engage with arrangements for repair of the Property.**

**14. In relation to the tenancy deposit, the representations state that the Respondent held on to the deposit "for security" because of cash flow issues and the fact that he had waived the Applicant's requirement to make a payment of rent in advance.**

### **Consideration of Application**

**15. Neither party indicated that it had any evidence to lead and the Tribunal considered that the application could be determined without a Hearing. In coming to this view, the Tribunal had regard to Rules 17 and 18 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.**

**16. The Tribunal made the following findings in fact:**

- 1. The Applicant and the Respondent were parties to a private rented tenancy agreement dated 11<sup>th</sup> November 2020.**
- 2. The tenancy commenced on 11<sup>th</sup> November 2020 and came to an end on 11<sup>th</sup> March 2021.**
- 3. The Applicant paid a tenancy deposit of £495 to the Respondent on 11<sup>th</sup> November 2020.**
- 4. The Respondent did not lodge the deposit with an approved tenancy scheme prior to 23<sup>rd</sup> December 2020.**
- 5. The Respondent lodged £200 with an approved tenancy deposit scheme on 29<sup>th</sup> January 2021.**
- 6. The Respondent lodged £295 with an approved tenancy deposit scheme on 12<sup>th</sup> February 2021.**
- 7. The Respondent was aware of the requirement to protect the tenancy deposit by lodging it with an approved tenancy deposit scheme.**
- 8. Clause 10 of the private rented tenancy agreement required the Respondent to protect the deposit.**

### **Reasons**

**17. The Tribunal considered the matters agreed between the parties, the documentary evidence, the application and the Respondent's written representations.**

18. The tribunal found the applicant credible. There was no dispute in facts. A tenancy deposit of £495 had been paid at the commencement of the tenancy and had not been lodged timeously.
19. The Respondent's written representations were, in large part irrelevant. The duty in terms of the Regulations is absolute. The Tribunal considered it troubling that the Respondent's failure to lodge the tenancy deposit was not accidental. He referred to cash flow issues.

## **The Sanction**

20. The creation of regulations to cover tenancy deposits was to protect tenants' funds and provide a structured process of dispute resolution. The Respondent received £495 as a deposit but did not lodge it with an approved deposit scheme.
21. The tenancy was for a period of four months and, for more than half of its term, the deposit was unprotected.
22. The Regulations are clear in stating that, where there is a breach such as this, the Tribunal must make an order requiring a Landlord to pay a Tenant a sum not exceeding three times the amount of the tenancy deposit. The amount is a matter of judicial discretion and must reflect what is a fair, proportionate and just sanction, having regard to the purpose of the Regulations and the gravity of the breach. It is a balancing exercise.
23. In this particular case, the Tribunal weighed all the circumstances and had regard to the fact that the deposit was unprotected for part of the tenancy but, set against that is the fact that the tenancy deposit was protected before the end of the tenancy and the Applicant has the benefit of the adjudication process of the tenancy deposit scheme.
24. The Tribunal had regard to and adopted the approach of the Court in *Russell- Smith and Others v Uchegbu (2016) SC EDIN 64* where the Sheriff had effectively stated there to be two broad aspects to the sanction. The first was the period of time the deposit was unprotected and the second is a sum to reflect a weighting taking into account the particular circumstances of the case including the landlord's experience etc.
25. The deposit was wholly unprotected for a period of seventy nine days and partially unprotected for a further fourteen days. The term of the tenancy was one hundred and eighteen days. It is considered that the appropriate starting point for the sanction should therefore be £250 and, in coming to this figure, the tribunal had regard to the relatively short period of the tenancy.

26. The Respondent had been aware of his responsibility to lodge the tenancy deposit with an approved scheme. He cited cash flow as a reason not to lodge it, referred in his written submissions to holding “some deposit as a security” and did not demonstrate that he realised the serious nature of the obligation to comply with the Regulations. The Tribunal took into account that the Applicant has not been prejudiced because the deposit was fully protected prior to the termination of the tenancy. The Tribunal considered that the financial penalty to reflect the second aspect referred to in the Russell- Smith case is fairly set at £500.

The Tribunal determined to make an Order requiring the Respondent to pay the sum of £750 to the Applicant.

### **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.

**Martin McAllister**

**Martin J. McAllister**  
**Legal Member**  
**7<sup>th</sup> July 2021**