



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/21/2173**

**Re: Property at 3/2 26 Carrington Street, Glasgow, G4 9AL (“the Property”)**

**Parties:**

**Mr Andrew Waterson, 0/1 37 Aitken Street, Glasgow, G31 3ND (“the Applicant”)**

**Mr Joe Manu, 1/1 26 Carrington Street, Glasgow, G4 9AL (“the Respondent”)**

**Tribunal Members:**

**Sarah O'Neill (Legal Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the respondent failed to comply with his duties under Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 regulations”). The tribunal therefore makes an order requiring the respondent to pay to the applicant the sum of £750.

**Background**

1. By application received on 7 September 2021, the applicant submitted an application under rule 103 of Schedule 1 to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. In terms of his application, the applicant was seeking an order for payment in respect of the respondent’s alleged failure to lodge the deposit paid by the applicant with an approved tenancy deposit scheme within 30 working days of the beginning of his tenancy, as required by regulation 3 of the 2011 regulations. Attached to the application form were emails addressed to the applicant from each of the three approved tenancy deposit schemes, each confirming that they did not hold his deposit.
2. Following a request from the tribunal administration for further information,

the applicant sent the following by email on 29 September 2021:

- i. copy tenancy agreement between the respondent and the applicant and his partner, Elizabeth Higgins, commencing on 20 July 2020.
- ii. copy handwritten receipt dated 19 July 2020 and signed by the respondent for the payment by the applicant and Miss Higgins of £300 as a deposit in relation to the property.
- iii. copy printed note addressed to the applicant and Miss Higgins dated 10 August 2021 and signed by the respondent, stating that they were required to leave the property on 20 August 2021.

In his email, the applicant stated that he sought an order for £900, representing three times the monthly rent, against the respondent.

3. The application was accepted on 8 October 2021. Notice of the case management discussion (CMD) scheduled for 16 November 2021, together with the application papers and guidance notes, were served on the respondent by sheriff officers on behalf of the tribunal on 13 October 2021. The respondent was invited to make written representations in relation to the application by 2 November 2021. Written representations were received from the respondent on 1 November 2021.

### **The case management discussion**

4. A CMD was held by remote teleconference call on 16 November 2021. The applicant was present on the teleconference call and represented himself. The respondent was present on the teleconference call and represented himself.
5. The tribunal chairperson explained to the parties at the start of the CMD that the tribunal could only consider the applicant's claim regarding the respondent's alleged failure to pay the applicant's tenancy deposit into an approved tenancy scheme. The tribunal could not make a decision on other issues which had been raised by the parties in their written representations. These included the respondent's alleged failure to return the applicant's deposit to him; any sums which the respondent claimed were owed to him by the applicant in respect of alleged damage to the property; and unpaid council tax which the respondent alleged the applicant owed him.
6. The applicant confirmed that he sought an order for £900, being three times the amount of his £300 tenancy deposit, as the respondent had not paid his tenancy deposit into an approved scheme within 30 working days of the commencement of his tenancy. His joint tenancy with Miss Higgins had begun on 20 July 2020 and they had paid a tenancy deposit of £300 at the start of the tenancy as stated in the tenancy agreement. The applicant pointed to the letters from the three tenancy deposit schemes as evidence that his deposit had not been paid into an approved scheme.

7. He told the tribunal that after he moved out of the property, he had been unable to contact the respondent to discuss repayment of the deposit. It was only at that point that it occurred to him that he had never received any documentation confirming that his deposit was protected. When he had contacted the three tenancy deposit schemes, it became apparent that his deposit had not been protected throughout his tenancy. He said that he considered the maximum award of three times his monthly rent was appropriate because the respondent had failed in his duties and tried to blame him for this. The respondent let out a number of HMO properties to young people and students and the applicant considered that he was not fit to do so.
8. The respondent told the tribunal that the only reason that he had not paid the applicant's deposit into an approved scheme was that the applicant had asked him not to. He said that the applicant had asked him to hold onto his deposit, so that he could get it back in cash from the respondent at the end of the tenancy, rather than receiving a cheque from the tenancy deposit scheme. He said that he was aware of his responsibility to pay the deposit into an approved scheme and that he had done so in respect of previous tenants. He said that the only reason he had not done so in this case was that the applicant had insisted that he did not do so.
9. The respondent had produced a signed handwritten statement from a friend, Josephine Day, as part of his written representations, which supported his version of events. In the undated statement, Ms Day said that she had been present when the applicant and Miss Higgins came to the property to pay their deposit. She said that the respondent had made clear that he would pay the deposit into an approved scheme, but that the applicant had said he would rather the respondent held his deposit in cash as this would be easier for him than a cheque.
10. The applicant denied that he had asked the respondent to keep his deposit in cash, saying that this version of events was entirely untrue. He said that he had assumed the deposit was being held in an approved scheme until he moved out of the property and discovered that this was not the case.
11. The respondent agreed that the applicant and Miss Higgins had paid him a tenancy deposit of £300. He also admitted that he had not paid the deposit into a scheme, despite being aware that he had a duty to do so. He said that his mistake had been to agree not to pay it into a scheme at the request of the applicant. He repeatedly referred to the alleged damages caused by the applicant to the property, and to a council tax bill which he had paid in respect of the property, which he considered the applicant was liable for. He appeared to be asking the tribunal to take these issues into account in reaching its decision. The tribunal chairperson again explained that these were entirely separate issues, and that it was open to the respondent to

make a separate application against the applicant in relation to these.

## **Findings in fact**

12. The tribunal made the following findings in fact:

- The respondent entered into a tenancy agreement with the applicant and Miss Higgins to rent a bedroom in the property, which was a four bedroomed flat shared with others, from 20 July 2020. The agreement stated that the tenancy was for a one-year period until 20 July 2021.
- The tenancy agreement provided that a tenancy deposit of £300 was to be paid. It also stated that the tenancy deposit would be 'held with the Letting Protection Services Scotland.'
- The tenancy was a 'relevant tenancy' in terms of the 2011 regulations.
- The applicant and Miss Higgins paid a tenancy deposit to the respondent on 19 July 2020.
- The respondent did not pay the tenancy deposit into an approved tenancy deposit scheme.
- The applicant and Miss Higgins left the property on 20 August 2021, as agreed with the respondent.
- The respondent was aware of his responsibilities under the 2011 regulations. He had paid previous tenancy deposits in respect of the property to Safe Deposits Scotland.

## **Reasons for decision**

13. The respondent admitted that he had failed to comply with the duty under regulation 3(1) of the 2011 regulations to pay the applicant's deposit into an approved tenancy deposit scheme within 30 working days of the start of the tenancy. The tribunal chairperson explained to the parties that the tribunal was therefore obliged to make an order requiring the respondent to make payment to the applicant, in terms of rule 10 of the 2011 regulations. The question then before the tribunal was the amount which the respondent should be ordered to pay to the applicant, which could be up to three times the amount of the tenancy deposit.

14. The tribunal noted that the parties had provided entirely opposing versions of events as to why the respondent has not paid the tenancy deposit into an approved scheme. The tribunal considered whether to fix an evidential hearing to allow the parties to provide further evidence before a two-member tribunal. Following a lengthy discussion with the parties, it appeared that neither party was in a position to put forward any further additional evidence, other than witness evidence from Miss Higgins for the applicant, and evidence from the respondent that he had paid previous tenancy deposits relating to the property into an approved scheme. Both parties indicated that they were

content for the tribunal to reach a decision on the level of penalty at the CMD, rather than have to come back again for a further hearing.

15. The tribunal adjourned briefly to allow the respondent to submit evidence by email that he had paid previous tenancy deposits into an approved scheme. This consisted of two deposit certificates from Safe Deposits Scotland in respect of previous tenants relating to the property, dated 23 November 2018 and 25 July 2019 respectively. The applicant stated that he believed that there had been other tenants living at the property between that time and the date when he and Miss Higgins had moved in. The respondent said that all of the previous tenants had moved out as a result of coronavirus pandemic.
16. The tribunal chairperson noted that the first coronavirus lockdown had not taken place until March 2020. The respondent then told the tribunal that there had been two other tenants living in the property after those whom the deposit certificates related to and before the applicant had moved in. He said that both of them had only stayed there temporarily, for a period of months. He had taken deposits from both of these tenants but had not paid these into an approved scheme. He said that he had returned their deposits at the end of their respective tenancies.
17. In light of all the evidence before it, and having regard to the overriding objective, the tribunal considered that it was able to make sufficient findings to determine the case without the need for a hearing, and that to do so would not be contrary to the interests of the parties.
18. In considering the appropriate level of payment order to be made in the circumstances, the tribunal considered the need to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach (*Sheriff Welsh in Jenson v Fappiano* 2015 GWD 4-89).
19. The applicant's tenancy deposit had been left unprotected for the entire length of his tenancy, a total of thirteen months. This had caused difficulties for the applicant at the end of the tenancy, as the respondent had not returned his deposit, and appeared to have retained it in respect of various alleged damages and alleged council tax debt. The applicant was denied the opportunity to dispute this through an approved tenancy deposit scheme.
20. The tribunal noted the view expressed by Sheriff Ross in *Rollet v Mackie* ([2019] UT 45) that the level of penalty should reflect the level of culpability involved. Some of the aggravating factors noted by Sheriff Ross in that case which might result in an award at the most serious end of the scale appeared to be present in this case. By the respondent's own admission, he was aware of his duty to protect the deposit. He also admitted that he had not done so in relation to at least two previous

tenants as well as the applicant. He had attempted to blame the applicant for his failure to protect his deposit. The tribunal found the applicant's version of events to be more credible and reliable, however. The only consideration which was in the respondent's favour was that, although he had attempted to lay the blame on the applicant, he had admitted that he had failed to protect the deposit. As Sheriff Ross noted, at para 13 of his decision: *"The admission of failure tends to lessen fault: a denial would increase culpability."*

21. Taking all of the above considerations into account, the tribunal determined that an order for £750, representing 2.5 times the amount of the tenancy deposit paid, would be appropriate in this case.

### **Observation by the tribunal**

22. The tribunal notes that the tenancy agreement between the parties was not in the form of a private residential tenancy agreement, despite having been entered into after 1 December 2017. The tribunal observes that the respondent may wish to seek legal advice to ensure that the tenancy agreements he uses comply with current tenancy law.

### **Decision**

23. The tribunal determines that the respondent has failed to comply with the duty in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 to pay a tenancy deposit to the scheme administrator of an approved scheme within the prescribed timescale. The tribunal therefore makes an order requiring the respondent to pay to the applicant the sum of £750.

### **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.**



**Legal Member/Chair**

\_\_\_\_\_  
\_\_\_\_16 November 2021\_\_\_\_  
**Date**