



**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/22/1175

**Re: Property at 2 New Mart Gardens, Flat 1, Edinburgh, EH14 1TZ (“the
Property”)**

Parties:

Mr Arran McKinlay, 2 Dovecot Park, Aberdour, KY3 0TA (“the Applicant”)

**Lowther Homes Limited, Wheatley House, 25 Cochrane Street, Glasgow, G1
1HL (“the Respondent”)**

Tribunal Members:

Alison Kelly (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment of £875 should be made.**

Background

On 26th April 2022 the Applicant lodged an Application with the Tribunal under Rule 103 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”).

Lodged with the application were: -

1. Copy Tenancy Agreement with a start date of 27th May 2019;
2. Copy emails showing a date of termination of 11th April 2022;
3. Email from Safe Deposits Scotland dated 17th October 2019 advising that the deposit had been transferred to another landlord.

The Tribunal wrote to the Applicant pointing out that the tenancy was in two names and asking for the other tenant to provide confirmation that he was content for the Applicant to bring the application alone. The necessary consent was provided.

The Application was served on the Respondent by Sheriff Officers on 24th May 202.

Case Management Discussion

The Case Management Discussion ("CMD") took place by teleconference. The Applicant represented himself. There was no attendance by the Respondent or any representative on their behalf.

The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. She asked the Applicant if he had had any contact with the Respondents. The Applicant said that after the application was served the Respondents had contacted him in an attempt to negotiate a settlement. They had offered £200. The Applicant said that he would prefer the Tribunal to deal with the matter.

The Chairperson confirmed that in terms of the Tribunal's overriding objective to act justly she was content to proceed in the absence of the Respondents. The papers had been served on them by Sheriff Officers. A check of the Tribunal's database of decisions showed that there had been several applications against the Respondents recently where they had not attended the CMDs. They had attempted to negotiate, so clearly were aware of the Application.

The Applicant confirmed that the tenancy had begun on 27th May 2019 and ended on 11th April 2022. A deposit of £875 was paid. He was content that the Respondents had deposited it with Safe Deposits Scotland. His complaint was that he had not been provided with the information contained in Regulation 42 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("TDS") as required by Regulation 3 of TDS. The first he had heard from Safe Deposits Scotland was the email he received on 17th October 2019, the contents of which are referred to above.

The Applicant said that he had received a letter from the Respondents in February 2022 advising that they had omitted to send the information required by Regulation 42 of TDS. This letter was lost by the Applicant during the house move.

The deposit of £875 was returned in full at the end of the tenancy.

The Applicant said that the respondents had not been very good landlords and he had been stressed during the tenancy.

Findings in Fact

1. The parties entered into a Tenancy Agreement in respect of the property;
2. The Tenancy Agreement commenced on 27th May 2019;

3. A deposit of £875 was paid;
4. The deposit was lodged with Safe Deposits Scotland;
5. The Respondents did not send the Applicant the information set out in regulation 42 of TDS as required by Regulation 3 of TDS;
6. The respondents sent the Applicant a letter in February 2022 confirming that they had not complied with Regulation 3 of TDS.

Reasons for Decision

In cases under TDS the Tribunal have to consider the seriousness of the breach when deciding in terms of Regulation 10 what the penalty for the breach should be. The tribunal has absolute discretion in each case, and must consider all the facts and circumstances.

The Respondents in this case are a large organisation who operate across the central belt of Scotland renting out properties. They are well aware of their obligations. There have been several similar cases before the Tribunal recently where they have not entered appearance. All of this shows a worrying disregard for their legal obligations as landlords.

The Respondents had, however deposited the funds in an approved scheme, which makes the breach less serious as the Applicant's funds were protected.

In all the circumstances the Tribunal decided to award the Applicant the sum of £875.

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.

Alison Kelly

Legal Member/Chair

14th July 2022

Date