



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/PR/22/1318

**Re: Property at 228 Flat 12 (2F1), Morrison Street, Edinburgh, EH3 8EA (“the
Property”)**

Parties:

**Mr Jared Dodd, 144 Portnalls Road, Chipstead, Surrey, CR5 3DX (“the
Applicant”)**

M&L Hutchison Ltd, 10 Creran Drive, Denny, FK6 5LT (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Respondent failed to comply with their duty as a
Landlord in terms of Regulations 3 of the Tenancy Deposit Schemes (Scotland)
Regulations 2011 (“the 2011 Regulations”) as amended by The Housing
(Scotland) Act 2014 (Consequential Provisions) Order 2017 by failing to pay the
Applicant’s Tenancy Deposit to the scheme administrator of an Approved
Tenancy Deposit Scheme, grants an Order against the Respondent for payment
to the Applicant of the sum of ONE THOUSAND ONE HUNDRED AND TWENTY
FIVE POUNDS (£1125.00) Sterling.**

Background

1. This is an Application dated 28 April 2022 for an order for payment where it is alleged the Respondent has not paid a deposit into an approved scheme under the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Application is made under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The Application was accompanied by a copy of a Private Residential Tenancy Agreement between the Applicant and the Respondent commencing on 12 November 2021, emails between the Applicant and Cox and Co dated 14 March 2022, Prescribed Information from Cox and Co under Regulation 42 of the 2011 Regulations and copy emails dated 12 and 13 April 2022 from of a Safe Deposits Scotland.
3. On 10 May 2022, the Tribunal accepted the Application under Rule 9 of the Regulations 2017.
4. On 21 May 2022 the Tribunal enclosed a copy of the Application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 19 April 2022. The Respondent required to lodge written submissions by 11 June 2022. This paperwork was served on the Respondent by Stephen McCallum, Sheriff Officer, Kirkcaldy on 23 May 2022 and the Execution of Service was received by the Tribunal administration. The Respondent did not lodge written submissions.

Case Management Discussion

5. The Tribunal proceeded with the Case Management Discussion (“CMD”) on 15 July 2022 by way of teleconference. The Applicant appeared on his own behalf. There was no appearance by or on behalf of the Respondent despite the teleconference starting 10 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice of and was aware the CMD was proceeding on 15 July 2022 and accordingly proceeded with the CMD in their absence.
6. The Tribunal had before it the copy of a Private Residential Tenancy Agreement between the Applicant and the Respondent commencing on 12 November 2021, emails between the Applicant and Cox and Co dated 14 March 2022, Prescribed Information under Regulation 42 of the 2011 Regulations from Cox and Co and copy emails dated 12 and 13 April 2022 from of a Safe Deposits Scotland. The Tribunal noted the content of these documents.
7. The Tribunal stated that it had read through the Application and summarised its understanding of the application namely that the tenancy agreement commenced on 12 November 2021 and terminated on 11 April 2022, the tenancy deposit of £750 in terms of Clause 11 of the tenancy agreement was paid by the Applicant to the Respondent’s letting agents Cox and Co and that the deposit was not paid to Safe Deposits Scotland until 11 April 2022.

8. The Tribunal referred the Applicant to the Prescribed Information which he had lodged and queried the dates on that. The Tribunal questioned why that information stated that the deposit had been paid on 12 November 2021 but yet showed that the deposit had been paid to Safe Deposits Scotland a month before on 13 October 2021. Mr Dodd accepted that did not make sense as a deposit could not have been paid into the scheme a month before it was paid. It appeared there was some error in the dates contained in the Prescribed Information. Mr Dodd could offer no explanation and confirmed he had not heard anything from either the Respondent or Cox and Co. However it was clear from the emails from Safe Deposits Scotland that the deposit had not been paid until the tenancy terminated on 11 April 2022.
9. The Applicant confirmed that there had been no issue with the deposit being returned to him quickly after the tenancy terminated. On reflection he accepted that seeking three times the amount of the deposit was unrealistic.

Findings in Fact

10. The Applicant entered into a Private Residential Tenancy Agreement with the Respondent on 12 November 2021 to rent the Property. He paid the Respondent's agent Cox and Co £750 deposit in terms of Clause 11 of the said tenancy agreement.
11. Cox and Co issued a Notice of Prescribed Information to the Applicant. The Notice erroneously stated that the deposit was paid to My Deposits Scotland on 13 October 2021 but that the Applicant did not pay the deposit to the Respondent as Landlord until 12 November 2021.
12. The Respondent did not lodge the deposit within 30 working days of 12 November 2015 into an approved scheme. The Respondent's agent Cox and Co lodged the Applicants' deposit with Safe Deposits Scotland on 11 April 2022
13. The deposit was not protected in accordance with the 2011 Regulations for the duration of the tenancy. The tenancy is terminated on 11 April 2022. The deposit was returned to the Applicant in full.

Reasons for decision

14. For the purpose of Regulation 9(2) of the 2011 Regulations an application where a landlord has not paid a deposit into a scheme administrator must be made within three months of the tenancy ending. The Tribunal found that the application was made in time, with the tenancy terminating on 11 April 2022 and the application being made on 28 April 2022.

15. Regulation 3 (1) and (2) of the 2011 Regulations provides –

“(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.

16. The 2011 Regulations were intended, amongst other things to put a landlord and a tenant on equal footing with regard to any tenancy deposit and to provide a mechanism for resolving any dispute between them with regard to the return of the deposit to the landlord or tenant or divided between both, at the termination of a tenancy.

17. The amount to be paid to the Applicant is not said to refer to any loss suffered by the Applicant. Accordingly, any amount awarded by the Tribunal in such an application cannot be said to be compensatory. The Tribunal in assessing the sanction level has to impose a fair, proportionate and just sanction in the circumstances, always having regard to the purpose of the 2011 Regulations and the gravity of the breach. The Regulations do not distinguish between a professional and non-professional landlord. The obligation is absolute on the landlord to pay the deposit into an Approved Scheme.

18. In assessing the amount awarded, the Tribunal has discretion to make an award of up to three times the amount of the deposit, in terms of Regulation 10 of the 2011 Regulations.

19. The Tribunal considered that it was clear Cox and Co acted as the agents and that they had issued erroneous Prescribed Information. However the Respondent had offered no explanation as to why the deposit had not been paid throughout the whole of the tenancy. It was of concern that the deposit had been unprotected for the duration of the tenancy, albeit that it had only lasted 5 months and that no action to pay the deposit into the scheme was taken until the termination date.

20. Despite the Tribunal being satisfied that the Respondent had failed to comply with their duties under Regulations 3 (1) of the 2011 Regulations, the purpose of the 2011 Regulations had not been defeated. The Applicant had had the deposit returned to him in full after it was paid into the approved

scheme at the termination of the tenancy. In all the circumstances, the Tribunal considered that a fair, proportionate and just amount to be paid to the Applicant was one and a half times the amount of the deposit.

Decision

21. The Tribunal accordingly made an Order for Payment by the Respondent to the Applicant of £1125.

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.

Shirley Evans

Legal Member

15 July 2022

Date