



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

**Chamber Ref: FTS/HPC/PR/22/1104**

**Property at 20 Well Street, Monifieth, DD5 4AH (“the Property”)**

**Parties:**

**Mr Roderick Brosnan, IRODOTOU GAVIIL, MALIA, LIMASSOL, 4777, Cyprus (“the Applicant”)**

**Ms Sonja Read, 17 EDGEHILL TERRACE, ABERDEEN, AB15 5HA (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £150 should be made in favour of the Applicant.**

**Background**

1. By application lodged between 19 and 27 April 2022, the Applicant seeks an order in terms of Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and Regulations 9 and 10 of the 2011 Regulations. The Applicant lodged copy of his tenancy agreement and an email from Safe Deposit Scotland (“SDS”), which states that a deposit of £625 was lodged on 23 September 2021, in support of the application.
2. A copy of the application and supporting documents were served on the Respondent. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 12 July 2022 at 10am and that they were required to participate. Prior to the CMD the Respondent notified the Tribunal that she would be represented by her former letting agent. The agent, Mr Carnie of Aberdeen Property Leasing, submitted written representations. The Applicant also lodged further submissions and documents.

3. The CMD took place on 12 July 2022 at 10am. The Applicant participated. The Respondent was represented by Mr Carnie.

### **The CMD**

4. From the application form, the documents lodged in support of the application and the information provided at the CMD the Legal Member noted the following:
  - (i) The tenancy started on 6 August 2021 and terminated on 5 March 2022.
  - (ii) The Applicant paid a deposit of £625 on 27 July 2021.
  - (iii) The deposit of £625 was not lodged in an approved tenancy deposit scheme until 23 September 2022.
  - (iv) It is conceded by the Respondent that the deposit was lodged more than 30 working days after the start of the tenancy.
  
5. The Tribunal noted that the submissions and documents lodged by the Applicant appear to relate to various matters which are not directly relevant to the failure by the Landlord to lodge the deposit in an approved scheme in accordance with the Regulations. Mr Brosnan conceded that this might be the case. He explained that there had been a number of issues with the letting agent over and above the late lodging of the deposit. He and his wife had decided to lease the property due to personal circumstances. They had paid 6 months rent in advance as well as the deposit. There had been problems throughout the tenancy with the letting agent. At the end of the tenancy, repayment of the deposit was dealt with by the scheme. They challenged a cleaning bill. They then agreed to accept a lower deduction, to settle the dispute. The sum of £565 was repaid to them, being the deposit less the sum of £60. In response to questions from the Legal Member Mr Brosnan said that he did not become aware that the deposit had been lodged late until SDS notified them on 24 September 2021. He had not been aware of the Regulations until that date. He stated that the breach of the Regulations was a serious matter and an organisation such as Aberdeen Property Leasing should not have allowed it to happen. He also said that he was looking for the maximum penalty to be awarded, so that the letting agents did not fail other tenants in the future. He told the Legal Member that he and his wife had found this and the other issues at the end of the tenancy very distressing. They have now moved abroad, and he has had to give up work due to stress and a medical condition. He is keen now to put the matter behind him.
  
6. Mr Carnie firstly told the Legal Member that he wished to withdraw the reference in the written representations to the application being lodged outwith the 3 month time limit. He advised that the Respondent was unable to attend the CMD as she is on holiday. However, he said that the agents accepted that the deposit had been lodged 5 days late and that this was their failure. Mr Carnie

explained that Aberdeen Property Leasing is a large organisation with 40 staff. They deal with a hundred deposits per month, and all are lodged with SDS. On this occasion, a software issued resulted in the deposit being overlooked. It remained in their client account from the time it was paid until it was deposited on 23 September 2021. An audit on that date highlighted the oversight and it was lodged within 30 minutes. The agent provides a full management service for the Respondent, and this includes taking payment of the deposit and lodging it in an approved scheme. They have taken steps to ensure that it does not happen again by arranging staff training and weekly audits. In response to further questions Mr Carnie said that the Respondent has no other rental properties. They managed this tenancy and one previous tenancy on her behalf. They no longer manage the property as the Respondent has decided to put the property on the market for sale. He concluded by asking that the Tribunal be lenient in the circumstances of the case.

### **Findings in Fact**

7. The Applicant is the former tenant of the property.
8. The tenancy started on 6 August 2021.
9. The Respondent is the owner and former landlord of the property.
10. The Applicant paid a deposit of £625 on 27 July 2021.
11. The tenancy terminated on 5 March 2022.
12. The deposit paid by the Applicant was not lodged by the Respondent in an approved tenancy deposit scheme until 23 September 2021.
13. Most of the deposit paid by the Applicant was repaid to him at the end of the tenancy.
14. The Respondent's letting agent provided a full management service for the Respondent. This included taking payment of the deposit and arranging to lodge it in an approved scheme.
15. The failure by the agent to lodge the deposit within 30 working days of the start of the tenancy was due to a computer software problem.

### **Reasons for Decision**

16. Regulation 3 of the 2011 Regulations states –
  - (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.

(1A) Paragraph (1) does not apply –

(a) Where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and

(b) The full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord,  
Within 30 working days of the beginning of the tenancy.

17. The Tribunal is satisfied that the Applicant's tenancy is a relevant tenancy in terms of the 2011 Regulations and that a deposit of £625 was paid and not lodged in an approved deposit scheme within 30 days of the start of the tenancy. The Tribunal notes that the application was lodged with the Tribunal between 19 and 27 April 2022. The Applicant has therefore complied with Regulation (9)(2) of the 2011 Regulations, which requires an application to be submitted no later than 3 months after the tenancy had ended.

18. Regulation 10 of the 2011 Regulations stipulates that if the Tribunal is satisfied that the landlord did not comply with a duty in terms of regulation 3, it “**(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.**” The Tribunal therefore determines that an order must be made in favour of the Applicant.

19. The Applicant seeks an award of three times the deposit, the maximum which can be awarded.

20. The Legal Member notes that the deposit was lodged in an approved scheme by the Respondent's letting agent 6 days (four working days) after the expiry of the 30-day period specified in the 2011 Regulations. The tenancy was not terminated until 5 March 2022 and the deposit was secured until that date. It is clear from the written and oral submissions that the late lodging of the deposit was an oversight on the part of the Landlord's agent, rather than the landlord, and was due to an issue with computer software. Although the 2011 Regulations impose obligations on landlords, rather than the agents they instruct, the Legal Member is satisfied that the Respondent had delegated this matter to her agent and had no actual knowledge of or involvement in the oversight. The deposit was never in her possession and although not secured in a deposit scheme for several weeks after it had been paid, it was held by a letting agent in their client account. The deposit was therefore relatively safe for the unsecured period. The Legal Member is also satisfied that the letting agent addressed the oversight as soon as they became aware of it. The majority of the deposit was released back to the Applicant at the end of the tenancy and that there do not appear to have been any adverse financial consequences for him because of the breach of the Regulations. The Legal Member notes that the Applicant has experienced distress. However, the failure by Landlord's agent to lodge the deposit only contributed in a small way to this. Bereavement, health issues and stress caused by other issues he had with the letting agents'

management of the property all played a part. The Legal Member is not satisfied that the other complaints and concerns about the letting agent can be considered when assessing the penalty which should be imposed in terms of the 2011 Regulations.

21. In the case of *Rollett v Mackie* (2019 UT 45), the Upper Tribunal refused the appeal by the Applicant who argued that the maximum penalty ought to have been imposed. Sheriff Ross commented that the “level of penalty requires to reflect the level of culpability” and that “the finding that the breach was not intentional...tends to lessen culpability” (13). He goes on to say, “Cases at the most serious end of the scale might involve repeated breaches against a number of tenants, fraudulent intention, deliberate or reckless failure to observe responsibilities, denial of fault, very high financial sums involved, actual losses caused to the tenant.”
22. In the present case, none of the aggravating factors highlighted by Sheriff Ross are present. Furthermore, the tenant suffered no financial loss and did not become aware of the failure until after it had been rectified. The failure was due to oversight and was remedied as soon as it came to light. Although it is the landlord who must comply with the regulations, she had delegated the task to her agents, a well-established letting agency. In the circumstances the Legal Member is satisfied that the breach is at the lowest end of the scale and should only attract a modest penalty. The sum of £150 is awarded.

## **Decision**

23. The Tribunal determines that an order for payment of the sum of £150 should be made in favour of 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.**

**J. Bonnar**

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**Legal Member**

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**12 July 2022**  
**Date**