



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

**Chamber Ref: FTS/HPC/PR/22/1142**

**Re: Property at 190 Montrose Street, Brechin, Angus, DD9 7DZ (“the Property”)**

**Parties:**

**Miss Moira Thomson, 202B Montrose street, Brechin, Angus, DD9 7DZ (“the Applicant”)**

**BS Properties, 23 S Tay street, Dundee, Angus, DD1 1NR (“the Respondent”)**

**Tribunal Members:**

**Karen Kirk (Legal Member)**

1. This Hearing was a Case Management Discussion (hereinafter referred to as a “CMD”) fixed in terms of Rule 17 of the Procedure Rules and concerned an Application under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (hereinafter referred to as “the Deposit Regulations”). The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained and it was understood a final decision could be made. The hearing took place by teleconference due to the covid-19 pandemic.

**2. Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £525 in terms of Regulation 10(a) of the Regulations should be made.**

**3. Attendance and Representation**

The Applicant was present and unrepresented.

The Respondent was represented by their employee Miss Pamela Reid.

#### **4. Preliminary Matters**

The Applicant's representative wished to raise as a preliminary matter that when the Respondent moved out of the property she had to stay another 10 days after the notice period and that the rent for this 10 days was deducted from the deposit. She said the Respondent were willing to return same.

There were no other preliminary matters raised by any party and the CMD proceeded.

#### **5. The Case Management Discussion**

##### *For the Applicant*

- The Applicant told the Tribunal that she had been notified by the tenancy deposit scheme that the deposit she paid had not been lodged for 3 months after the start of the Tenancy on 3<sup>rd</sup> August 2021. She said she was told in that letter that the deposit ought to have been secured within 30 days and had not been aware of this until the letter. The Applicant said that she got another letter notifying her of this after she left the tenancy on April 12<sup>th</sup> 2022. This letter explained how she could lodge an application and she went ahead and did that. The Applicant told the Tribunal she would leave the amount of any award to their discretion.

##### *For the Respondent.*

- The Respondent's representative said that at the time of the commencement of the Tenancy she herself was the only one running the office which at that time was managing 100 properties. The Respondent's representative said that it was an error and not deliberate. She accepted that the deposit was lodged late. She explained that one of the Respondent's employees had robbed the business of substantial funds and she struggled to deal with the workload. The Respondent's now manage 150 properties and they have protocols in place for securing the deposit timeously. She thought an award of the deposit amount only of £350 would be fair.

#### **6. Agreed Facts**

- Parties agreed the Tenancy commenced on 3<sup>rd</sup> August 2021.
- Parties agreed the Tenancy Agreement referred to a deposit was to be paid for the property.
- Parties agreed the Applicant paid a deposit of £350.
- Parties agreed that the Respondents did not as required register the tenancy deposit in connection with the property within 30 days of commencement of the Tenancy.
- Parties were in agreement that the Respondent secured the deposit late on 18<sup>th</sup> November 2021.
- Parties agreed that the Applicant left the property on 12<sup>th</sup> April 2022.

## 7. Reasons for Decision

1. Rule 17 of the Procedure Rules provides that a Tribunal can do anything at a CMD which it may do at a Hearing, including making a decision. The Legal Member was satisfied that the Tribunal had everything before it that it would require in order to make a decision having regard to the Overriding Objective. The sufficiency of facts agreed by parties allowed a decision to be made. No further evidence not already before the Tribunal was referred to by parties as necessary.
2. The Application was brought timeously in terms of regulations 9(2) of the Deposit Regulations.
3. A Private Residential Tenancy was in place between parties dated 2<sup>nd</sup> August 2021. Same ended on 12<sup>th</sup> April 2022.
4. The Applicant paid a deposit of £350 for the property.
5. In terms of Deposit Regulation 10 if the FTT is satisfied that the landlord did not comply with any duty detailed in Regulation 3 then the FTT must order a landlord to pay the tenant or tenants an amount not exceeding three times the amount of the tenancy deposit.
6. The FTT was satisfied that the Respondent did not register the deposit with a deposit protection scheme as required by Regulation 3. The Applicant had lodged written evidence from the safe deposit schemes confirming same and confirmation the deposit was registered late on 18<sup>th</sup> November 2021.
7. If the FTT was satisfied a breach of the regulations had occurred the FTT had to make an order in terms of Regulation 10.
8. In terms of Regulation 10 the FTT is obliged to make an order up to 3 times the deposit of the applicants to the respondent.
9. When considering the Order and level of sanction the FTT must have regard to the severity of the breach and any mitigating factors.
10. The deposit was unsecured for just over 3 months of the tenancy. The period of insecurity was not insignificant. The Respondent has a large property portfolio. They were dealing with a fraud issue in regards an ex-employee at the time of commencement and the office was run by one member of staff.
11. In the case of *Jenson v Fappiano* 2015 G.W.D 4-89 in relation to the amount of such an Award under regulation 10 of the Regulations it was noted that a judicial analysis of the nature of the non-compliance was required and a value attached to reflect a sanction which was fair and proportionate and just given the circumstances.

12. It was further noted that the Sheriff said in said case that the value was not the starting point of three times the deposit minus the mitigating factors it was what was fair and proportionate in the exercise of balanced judicial discretion.
13. The Court of Session in Tenzin v Russell 2015 Hous. L.R 11 held that any payment in terms of Regulation 10 of the Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.
14. The FTT was therefore of the view that an Award should be made in the low to middle end of the scale as the deposit had been unsecured for just over 3 months of the tenancy. The Tribunal also considered that the Respondents when they became aware of the error appear to have lodged the deposit. However they also have a large portfolio. Accordingly in balancing the circumstances of both parties the FTT finds that the Applicant is entitled to an award of 1 and a half times the deposit to the sum of £525.

### **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.**

# K Kirk

13/07/2022

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**Legal Member/Chair**

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**Date**