



**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/22/1080

**Re: Property at Molmontend Farm, Newmilns, Ayrshire, KA16 9LS (“the
Property”)**

Parties:

**Mr Robert Craig, Molmontend Farm, Newmilns, Ayrshire, KA16 9LS (“the
Applicant”)**

**Mr Geoff Harvey, 32 Alwynside, Alnwick, Northumberland, NE66 1DL (“the
Respondent”)**

Tribunal Members:

Gillian Buchanan (Legal Member)

Decision

At the Case Management Discussion (“CMD”) which took place by telephone conference on 29 June 2022 the Applicant and the Respondent were both present and unrepresented.

Prior to the CMD the Tribunal received:-

- i. An email from Harper Macleod, Solicitors, Glasgow dated 27 May 2022 with written Submissions on behalf of the Respondent;
- ii. An email from the Applicant dated 1 June 2022 with copy text messages attached; and
- iii. An email from the Respondent dated 8 June 2022.

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that -**

The following issues are not in dispute between the parties:-

- The Respondent leased the Property to the Applicant in terms of a Private Residential Tenancy Agreement dated 18 August 2020 (“the PRT”).

- The PRT commencement date was stated to be 28 September 2020.
- The PRT required that the Applicant pay to the Respondent a deposit of £750.
- The Applicant made a payment of £7,750 to the Respondent on 29 September 2020.
- The Respondent did not, at any point during the tenancy or subsequently, pay the deposit into an approved scheme as required in terms of Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations").
- The Applicant remains in occupation of the Property.

The Case Management Discussion

In addition to the application and the written representations of the parties, the Tribunal had regard to the following oral submissions:-

For the Applicant:-

- i. That the Applicant viewed the Property in around June 2020. At that time the Respondent was working on the Property and continued to do so until the date upon which the Applicant finally moved in, 28th December 2020, and thereafter.
- ii. That on the date of commencement of the PRT, namely 28th September 2020, the kitchen installation remained incomplete, the bathroom suite had not been installed, there was no heating in the bathroom or the kitchen and the open fire in the living room was not operational which is still the case as that the CMD.
- iii. The Respondent was always confident that the Property would be ready for the Applicant to move into on 28th September 2020.
- iv. The original property had been divided to by the Respondent. Within the Property, the Applicant asked the Respondent to install bathing facilities as it only had a small cloakroom with WC and wash hand basin. Heating was also required and the glazing was defective and needed made wind and watertight. These works were required to make the Property into a self-contained unit.
- v. That the Applicant agreed to pay rent upfront in a sum of £9000 to allow the necessary remedial works to the Property be undertaken by the Respondent. That figure included the deposit of £750 together with a deposit of £750 in respect of the adjacent property being let separately by the Respondent to a third party which the Applicant had agreed to pay.
- vi. That the Applicant paid £7,750 to the Respondent on 29th September 2020 of which £750 was attributable to the deposit for the adjacent property leaving a balance of £6,250 by way of advance rent and £750 for the deposit relative to the PRT.
- vii. That as the Property was not ready to move into on 28th September 2020, the arrangements required to renegotiated. At that time works were ongoing. In particular the double glazing was been fitted to the front room and kitchen (which required taken out and refitted at a later date), the electrical completion certificate had not been issued, the Property could not be carpeted and the Applicant could not move in. The Applicant stayed in the adjacent property until the day prior to Christmas 2020.
- viii. No new entry date was agreed as the Respondent could not provide a date when the works would be complete.
- ix. The Applicant is not liable to pay rent to the Respondent until 28th December 2020.
- x. The Applicant made numerous requests to the Respondent to lodge the deposit into an approved scheme. The Respondent attended at the Property fortnightly for a number of months to carry out and discuss work required and the Applicant would ask the Respondent for the security deposit number. Others heard these conversations. No number was issued.
- xi. The deposit was spent by the Applicant on other things.

For the Respondent

- i. That the en suite was installed in the Property as a priority.
- ii. The original property is not split but rather is shaped like a "dog leg" with the Applicant occupying one leg and another tenant occupying the other leg. Both parties have a separate lease.
- iii. The Applicant was using the bathing facilities in the other adjacent property and was aware of the extent of the works to be done to the Property.
- iv. That the Applicant paid the deposit of £750 in respect of each of the two properties and would recover the deposit from the adjacent tenant.
- v. That the Property was ready to move into on 28th September 2020 with certain works remaining to be done of which the Applicant was fully aware.
- vi. That the Applicant was supposed to pay one year's rent in advance together with the deposit. That would allow the Respondent to get on with the remedial works.
- vii. Of the sums paid, the Applicant was under the impression that all of those monies were advanced rent and did not include the security deposit.
- viii. The Respondent now accepts that the initial funds paid should have been treated as including the security deposit of £750 which ought to have been lodged in a scheme in terms of the Regulations.
- ix. The deposit is still not lodged in an approved scheme is at the CMD. The Respondent was unaware he could lodge the deposit late.
- x. That the Respondent has eight rented properties in total - five properties are residential properties in England managed by a letting agent there, one property is commercial premises in Irvine and the other residential property in Scotland is the adjacent property mentioned above. The commercial property is managed by solicitors.
- xi. That the deposit for the adjacent property is not lodged in an approved scheme.
- xii. That the Respondent has been letting properties in Scotland for 15 years.
- xiii. That the previous tenant in the Property did not pay any deposit at their request.
- xiv. The Property was previously managed by a letting agent. This is the only time that the Respondent has personally managed the properties and accepts having made some errors.

Reasons for Decision

The Tribunal takes a landlord's failure to comply with the Regulations very seriously.

In terms of Regulation 10 of the Regulations it is stated:-

"If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal -

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit;"

Notwithstanding some differences between the submissions made by the parties relative to certain factual matters there was no dissent on the key issues relative to the deposit. Indeed, the Respondent accepted receipt of the deposit of £750 and admitted a breach of the Regulations by failing to lodge the deposit into an approved scheme. On that basis the Tribunal is obliged to make an order against the Respondent.

In determining the amount payable by the Respondent to the Applicant the Tribunal took into account the following:-

- i. That the deposit has been unprotected for the entire duration of the PRT and is still not lodged within an approved scheme as at the date of the CMD.
- ii. That the Applicant requires to have the benefit of the adjudication process operated by an approved scheme operating under the Regulations relative to the return of the deposit at the end of the PRT.
- iii. That the Respondent is a commercial landlord having another 6 residential properties, 1 of which is in Scotland, and commercial premises in Irvine too.
- iv. It is the Respondent's responsibility to be aware of and ensure compliance with the Regulations.
- v. That the Respondent's failure to comply with the Regulations is not excusable.
- vi. That the Respondent's failure to adhere to the terms of the Regulations sits towards the most serious end of the scale of penalties available to the Tribunal in terms of the Regulations.
- vii. That the financial arrangements between the parties were complicated and the Respondent believed he could treat all the sums paid by the Applicant as advanced rent since those sums fell short of the total amount he expected to receive.

The Tribunal therefore determined that, having regard to the foregoing, the Respondent must pay to the Applicant a sum of £1,500.00 by way of a penalty for his failure to comply with the Regulations, being two times the deposit. Such a penalty is proportionate, fair and just and reflects the Tribunal's view that the Respondent's failure to comply with the Regulations is a serious matter.

Decision

The Respondent is ordered to pay to the Applicant a sum of £1,500.00.

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.

 Gillian Buchanan

Legal Member/Chair

29 June 2022
Date