



**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/22/1046

Re: Property at 20 West Terrace, South Queensferry, EH30 9LL (“the Property”)

Parties:

**Mr Szabolcs Kolozsvari, 10 Kirkcoun Street, Ballingry, Lochgelly, KY5 8NU
 (“the Applicant”)**

**Mrs Angela Kirkwood, 5 Hillview Terrace, Edinburgh, EH12 8RA (“the
Respondent”)**

Tribunal Members:

Valerie Bremner (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Respondent should pay to the Applicant the sum
of £300 having found that the Respondent had breached the duties set out in
Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.**

Background

1.This is an application under Regulation 9 of the Tenancy Deposit Schemes
(Scotland) Regulations and Rule 103 of the Tribunal rules of procedure in respect of
an alleged failure to comply with the duties required of a landlord under Regulation 3
of the 2011 Regulations.

2.The Application was first lodged with the Tribunal on 8th April 2022 and accepted by
the Tribunal on 12th April 2022.A case management discussion was fixed for 17th June
2022 at 2pm.

Case Management Discussion

3.The case management discussion was attended by the Applicant who represented himself and the Respondent who also represented herself.

4.The Tribunal had sight of the application, a private residential tenancy agreement, a redacted bank statement, correspondence from all three approved tenancy deposit schemes, and an email giving notice to end the tenancy dated 11th March 2022.

5.The Respondent had lodged written representations, photographs, text messages, email correspondence between the parties, a receipt, screen shots of accounts held with one of the tenancy deposit schemes providers and two statements, one from a current tenant and the other from a friend who was present at the check-out of the property at the end of the Applicant's tenancy.

6.The Applicant 's position was that the Respondent had failed to comply with both of the duties in terms of Regulation 3 of the 2011 Regulations in that she had not protected his tenancy deposit nor given him the information required in terms of Regulation 3 of the 2011 Regulations.

7.The Applicant Mr Kolozsvari confirmed that he had entered into a tenancy agreement with the Respondent Mrs Kirkwood with effect from 8th February 2021 and paid a deposit of £1050 on 1st February 2021.He described the Respondent as a good landlord and agreed they had had not any disputes during his tenancy. He had given notice to leave on 11th March 2022 and had expressed in the email giving notice of the intention to leave that he was appreciative of all the help and support received from the Respondent during the tenancy. In this email the Applicant asked for details of where his deposit was held.

8.A pre check out inspection was held at the property on 13th March 2022 and the Applicant became concerned after this inspection that his deposit might not be protected. He knew that the Respondent could protect the deposit late and did not mention his concerns to her, believing that she might realise the situation and protect the deposit even at that late stage. He made enquiries with the various deposit schemes and learned that his deposit was not held by a scheme. He was concerned that this denied him the chance to use the deposit scheme provider mediation scheme if required and was worried that his deposit was at risk. When he had enquired regarding the deposit, he had been told by the Respondent Mrs Kirkwood that she would find the email with the details and send it to him. He gave her what he described as the "benefit of the doubt" to allow her time to look for the e mail. When the property check out was completed on 8th April 2022, he still had not received his deposit back, but this was received on 10th April 2022 less an agreed sum for an extra day's rent.

9.The Tribunal Legal member explained the duties in terms of Regulation 3 of the 2011 Regulations to the Respondent who accepted that she had breached the duties and gave an explanation.

10.The Applicant accepted that the breach of duties had occurred due to an error on the part of the landlord and agreed that she had otherwise been a good landlord during his tenancy. He had simply submitted the application as he believed his deposit was at risk and the landlord's responsibilities had not been complied with by the Respondent. He did not suggest that the Respondent was fully aware that the deposit was not protected when they had a conversation at the pre check out inspection and did not suggest that the steps she had taken to try to track down what had happened to the deposit after that date were other than part of her mistaken belief that she had complied with her duties in terms of the Regulations. He expressed concern regarding the personal circumstances of the Respondent around the start and early part of the tenancy which had been raised by the Respondent in her submissions. He said he had not lodged the Application in order to gain compensation. He did not wish to

address the Tribunal on the issue of the amount of any sanction to be awarded and indicated that he would leave this to the Tribunal legal member to decide.

11. The Respondent apologised for her failure to adhere to the duties required of her in relation to the deposit taken. She had lodged a timeline of events from March 2022 and set out the steps she had taken to track down the deposit which she believed had been protected and said that she believed that she had complied with her duties. She had discovered that she held two accounts with an approved tenancy deposit scheme provider she used for the properties she rented and had lodged a complaint regarding this matter with them. She had believed initially that this was the reason she could not find the Applicant's deposit in the scheme, but on subsequent enquiry she accepted that the deposit had not been lodged due to an oversight on her part. She could not explain how this had occurred other than human error but pointed to certain personal health matters set out in her submissions which were ongoing around the time when the deposit was paid, when the tenancy started, and when the deposit should have been protected. She explained that she rents out a number of high-quality properties and that all deposits are protected, and she said she was scrupulous about her duties with deposits. She said that the Applicant's deposit was never at risk, and she had repaid it in full two days after the tenancy had ended subject to an agreed reduction regarding an extra day's rent. She referred to the statement of a current tenant as to the type of landlord she is and the statement of her friend who had been present at the property check out. She asked that all matters be taken into account when deciding on the level of sanction to be imposed on her.

12. The majority of the facts put forward by both parties were not in dispute. There was a difference of position regarding the amount of cleaning required at the end of the tenancy and the exact nature of the conversation which had occurred at the pre check out inspection on 13th March 2022. The parties were agreed on all matters relevant to the facts and issues that the Tribunal required to consider, and both wished the matter to be dealt with at the case management discussion.

13. The tribunal legal member was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

14. The Applicant and the Respondent entered into a private residential tenancy agreement at the property on 8th February 2021.

15. This tenancy ended with effect from 8th April 2022.

16. The Applicant paid a deposit of £1050 to the Respondent at the start of February 2021.

17. The tenancy was a relevant tenancy within the meaning of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

18. The deposit paid by the Applicant was not secured by or on behalf the Respondent in any of the approved tenancy deposit schemes during his tenancy.

19. The information required to be given to the Applicant by the Respondent in terms of Regulations 3 and 42 of the 2011 Regulations was not given to the Applicant by the Respondent.

20. At the start of the tenancy and during its terms that Respondent suffered personal health issues.

21. The Respondent failed to protect the Applicant's deposit and give him the required information in terms of the Regulations due to an oversight on her part.

22. As of May 2022 the Respondent had two memberships with an approved tenancy deposit scheme provider and 5 deposits were protected in this scheme.

23. The Applicant requested information regarding the whereabouts of his deposit when he gave notice to leave but did not advise the Respondent that he believed it was not protected in an approved scheme in order to allow her the chance to realise her error and secure the deposit.

24. The Applicant's deposit was returned to him in full on 10th April 2022 other than an agreed deduction regarding an extra day's rent.

Reasons for Decision

25. The Tribunal having found that there was a breach of the Regulations, it then fell to the Tribunal to consider what sanction should be made in respect of the failure to protect the deposit and give the information required in terms of Regulation 3 of the 2011 Regulations within the required timeframe. The Tribunal had regard to the case of ***Russell - Smith and others against Uchegbu [2016]SC EDIN 64***. In particular the Tribunal considered what was a fair proportionate and just sanction in the circumstances of the case always having regard to the purpose of the Regulations and the gravity of the breach. Each case will depend on its own facts and in the end of the day the exercise by the tribunal of its judicial discretion as a balancing exercise.

26. The Tribunal considered all of the information before it and found that there were a number of factors to be weighed in the balance in this application. The first was that the deposit had been unprotected for the entire period of the tenancy and this would have deprived the Applicant of the ability to use the deposit scheme mediation service had that been necessary in the event of a dispute over the return of the deposit at the end of the tenancy. The information required to be given as to the deposit had never been given to the Applicant. As against that it was agreed that the tenancy had been without issues between the parties and the Respondent appeared to be a landlord who was aware of and took her responsibilities as a landlord seriously and this was not disputed by the Applicant. She had accepted responsibility for the breach and apologised. The information before the Tribunal pointed to the failure to adhere to the duties being an oversight at a time when the Respondent was suffering from some personal health issues. She let out a number of properties and the deposits in a number of these tenancies appeared to be protected from the information presented to the Tribunal legal member. That said a sanction had to be made as the duties had not been complied with, but the Tribunal was satisfied in all the circumstances that it was appropriate to impose a sanction at the lower end of the range of possible sanctions given the circumstances in this application.

Decision

The Tribunal determined that the Respondent should pay to the Applicant the sum of £300 having found that the Respondent had breached the duties set out in Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

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.

Valerie Bremner

Legal Member/Chair

17.6.22
Date