



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

Chamber Ref: FTS/HPC/PR/19/2449

Re: Property 1/02, 592 Pollockshaws Road, Glasgow, G41 2PF ("the Property")

Parties:

Miss Grace Higgins Brown, Ms Paula Docherty, 10 Mayville Gardens, Edinburgh, EH5 3DB ("the Applicants")

Nathan Hogan, 4 Barony Drive, Lenzie, G66 3WE ("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 Regulations"). The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained to parties. Parties understood a final decision could be made.

2. Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment of the sum of £2070 in terms of Regulation 10(a) of the Regulations should be made.

3. Attendance and Representation

The Applicants were present and were also represented by David Doig, Raeside Chisholm solicitors, Tontine House, 8 Gordon Street, Glasgow G1 3PL.

The Respondent also attended the Tribunal personally and without representation.

4. Preliminary Matters

- The FTT asked the Applicants to clarify the Orders being sought given that the Application refers to a payment order being sought for a partial retention of a deposit as well as an order for payment due to a breach of the Regulations.
- The Applicant's representative confirmed that the Applicants were seeking a compensation order only relating to a breach of the Regulations in regards a failure to register a tenancy deposit and a failure to provide information in terms of Regulation 3 and 42 of the Regulations.
- The Tenancy commencement date was 30th September 2018. The tenancy ended on or around May 2019, although the Applicant confirmed this matter was in dispute it was not relevant to application before the FTT as in any event it was agreed that the Application was brought timeously in terms of regulation 9(2) of the Regulations. The Respondent considers the notice period meant that the termination date was later than 8th May 2019. However, as the Application having been lodged on 2nd August 2019 same was timeous and this was not challenged.

5. The Case Management Discussion

- The Applicant set out their position for the purpose of the CMD summarised as follows;
 - The initial deposit was £1035 made on commencement of the tenancy.
 - Regulations 3 of the Regulations provide that the Respondent has 30 working days to register the deposit with a deposit protection scheme and to provide tenants with the information required in terms of regulation 42 of the Regulations.
 - The Applicants position was that the Respondent breached these said Regulations and further at page 2 of 6 of the Respondents written representations he accepted the breach.
 - The Applicants representative submitted the written representations in reply of the Respondent were irrelevant.
 - The submission on behalf of the Applicants were that a compensation order was sought of 3 times the deposit based on the prejudice to the Applicants caused by the failure to register the deposit.
 - The Respondent had unilaterally deducted monies from the deposit and the Applicants were prejudiced in that as the deposit dispute could not be adjudicated fairly on the basis that the deposit had not been registered with an approved scheme.

- The Respondent in reply set out his position for the purpose of the CMD which he set out in the written representations lodged in response to the application and summarised as follows;
 - The Respondent commenced his submission by stating that he did not put the deposit in a recognised deposit scheme and this was an oversight on his part. No other explanation was given.
 - The Respondent then made submissions on the basis he felt that he had been fair to the Applicants as set out in his written representations and spoken to at the hearing.
 - The Respondent set out that he had in fact in his view not insisted on the full rent he could have insisted upon under the 45 days' notice he was entitled to under the Tenancy.
 - The Respondent also set out that he had been willing to return monies he had retained for a blind.
 - In addition to the submission he made about the property on leaving he made submissions that he felt an order of 3 times the deposit was punitive, not relational and was not proportionate.

6. 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 FTT was satisfied that it had everything before it that it would require in order to make a decision having regard to the Overriding Objective.
2. The Application was brought timeously in terms of regulations 9(2) of the Regulations.
3. In terms of 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.
4. The FTT was satisfied that the Respondent did not register the deposit with a deposit protection scheme as required by Regulation 3. This was accepted by the Respondent.
5. The FTT was also satisfied that a deposit of £1035 had been paid by the Applicants to the Respondent.
6. The Respondent did not deny that he had not registered the said deposit as required by the Regulations.

7. In his written and oral representations, he submitted reasons as to why he felt it was appropriate to retain monies from the deposit but did not provide any valid or relevant submissions regarding the non-registering of the deposit which was contrary to the regulations, other than to say it was an oversight.
8. As the FTT was satisfied a breach of the regulations had occurred the FTT had to make an order in terms of Regulation 10.
9. 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.
10. When considering the Order and level of sanction the FTT must have regard to the severity of the breach and any mitigating factors.
11. The deposit was unsecured throughout the tenancy. The applicants deposit was partially retained by the respondent and they did not have the protection or services of a deposit protection scheme to engage in arbitration.
12. 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.
13. 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.
14. 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.
15. The FTT was therefore of the view that an Award should be made in the middle to upper end of the scale as the deposit had been unsecured for the duration of the tenancy, there had been real practical prejudice to the Applicants and the explanation given for the breach was one of oversight only. Accordingly in balancing the circumstances it found the Applicants entitled to an award of 2 times the deposit to the sum of £2070.

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

Legal Member/Chair

7/10/14.

Date