

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

Chamber Ref: FTS/HPC/PR/22/4361

Re: Property at 24 Hermiston Village, Edinburgh, EH14 4AW (“the Property”)

Parties:

Ms Gillian Plews, 86 Hillview Cottages, Ratho, Newbridge, EH28 8RF (“the Applicant”)

Mr Ian Scott (SBA), Mr John Stewart, UNKNOWN, UNKNOWN; 21 Riversdale Road, Edinburgh, EH12 5QP (“the Respondents”)

Tribunal Members:

Nicola Irvine (Legal Member)

Decision (in absence of the First Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that there had been a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011; and it made an order for payment against the First Respondent in favour of the Applicant in the sum of £1,000.

Background

1. The Applicant submitted an application on 7 December 2022 under Rule 103 (Application for order for payment where landlord has not paid the deposit into an approved scheme) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.
2. The Applicant sought an order for payment on the basis that the Respondents were said to have breached the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).

3. By decision dated 11 January 2023, a Convenor of the Housing and Property Chamber having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).
4. Letters were issued on 10 February 2023 informing parties that a CMD had been assigned for 16 March 2023, which was to take place by conference call. In that letter, the parties were also told that they required to take part in the discussion and were informed that the Tribunal could make a decision on the application if the Tribunal has sufficient information and considers the procedure to have been fair.
5. On 28 February 2023, the Tribunal received written representations from the Second Respondent.
6. The Tribunal postponed the CMD assigned for 16 March 2023 because sheriff officers were unable to serve papers on the First Respondent, Ian Scott.
7. The Tribunal assigned a further CMD for 20 April 2023. Letters were issued to the Applicant and Second Respondent, providing details of the CMD.
8. On 13 March 2023, the Tribunal served the application on the First Respondent by advertisement on the Housing and Property Chamber website.
9. The Tribunal received further representations from the Applicant on 14 March and 31 March 2023.

Case Management Discussion – 20 April 2023

10. The CMD took place by conference call. The Applicant and Second Respondent participated in the discussion and the Second Respondent was represented by Ms Susan Robertson. The First Respondent did not join the conference call and the discussion proceeded in his absence. The Tribunal explained the purpose of the CMD. It was noted that the tenancy agreement lodged demonstrates that the agreement was between the Applicant and First Respondent. The Applicant explained that she paid the deposit of £600 at the start of the tenancy on 6 April 2015. She confirmed that the First Respondent was her landlord and she paid the deposit to him. The tenancy ended on 26 November 2022. The Applicant checked with all of the approved schemes and discovered that her deposit was not secured. The Tribunal indicated that there did not appear to be any legal basis upon which the Applicant could seek an order for payment from the Second Respondent. Although the Second Respondent owns the property, he was not the landlord and did not receive the deposit.
11. The Second Respondent’s representative explained that, as far as known to her, the First Respondent did not let out any other properties.

Findings in Fact

12. The Applicant and First Respondent entered into a short assured tenancy which commenced 6 April 2015.
13. The Applicant paid a deposit of £600 to the First Respondent.
14. The First Respondent did not secure the Applicant's deposit in an approved scheme.

Reason for Decision

15. The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits, and relevant to this case are the following regulations: -

Duties in relation to tenancy deposits

3.— (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.

Sanctions

9.— (1) A tenant who had paid a tenancy deposit may apply to the [First-tier Tribunal] 1 for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit. (2) An application under paragraph (1) must be made [...]2 no later than 3 months after the tenancy has ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the [First – tier Tribunal] 1 – (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and (b) may, as the [First – tier Tribunal] 1 considers appropriate in the circumstances of the application, order the landlord to – (i) pay the tenancy deposit to an approved scheme; or (ii) provide the tenant with the information required under regulation 42.

16. The 2011 Regulations impose duties on the landlord, rather than an owner of the property. There was therefore no legal basis for an order to be granted against the Second Respondent.
17. The First Respondent did not lodge any written representations and did not take part in the CMD. It was an undisputed fact that the Applicant paid a deposit of £600 to the First Respondent at the outset of the tenancy. It was also undisputed that the First Respondent did not secure a deposit for the Applicant in an approved scheme. The Tribunal determined that the terms of regulation

10 were engaged, and the Tribunal must order that the First Respondent pay the Applicant an amount not exceeding three times the amount of his tenancy deposit. The amount to be paid required to be determined according to the circumstances of the case, the more serious the breach of the regulations the greater the penalty.

18. The Tribunal considered that its discretion in making an award requires to be exercised in a manner consistent with the case *Jenson v Fappiano (Sheriff Court) (Lothian & Borders, Edinburgh) 28 January 2015*. It must be fair, just and proportionate and informed by taking account of the particular circumstances of the case.
19. The Tribunal considered the decision of the Upper Tribunal (UTS/AP/19/0020) which states: *"Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate of reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals."*
20. For all the reasons set out above, the Tribunal considered that the penalty should be at the lower end of the scale; there was no evidence of repeated breaches or fraudulent intent and the sum involved was relatively modest. In respect of the failure to comply with the 2011 Regulations, a sanction of ONE THOUSAND POUNDS (£1,000.00) is appropriate in this case.

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.

N Irvine

Legal Member/Chair

20 April 2023
Date