



**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/20/0606

**Re: Property at 25 G/R (B) North Hamilton St, Kilmarnock, KA1 2QL (“the
Property”)**

Parties:

**Mrs Loven Mae Quisaba, 10 Bloomhill Street, Doncaster, DN8 4PD (“the
Applicant”)**

Mr Hesham El-Shafei, unknown, unknown (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Respondent landlord had breached the terms of
Regulation 3 of the 2011 Regulations in that the tenancy deposit had not been
paid into an approved scheme as required and the information as set out in
Regulation 42 of the Regulations had not been provided to the Applicant and
further determined that an appropriate sanction in respect of this breach is
£562.50.**

Background

This is an application for sanction on a landlord for failure to comply with the duties on
a landlord in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland)
Regulations 2011. The Application was first submitted to the Tribunal on February 19,
2020 and was accepted by the Tribunal on 25 March 2020.

Case Management Discussion

This application called for a case management discussion on 25 August 2020 when the Applicant was in attendance. At that time the Respondent did not attend. The case management discussion was continued for further information to be provided in respect of the tenancy and the payment of rent.

The application called again for case management discussion on 23 October 2020. The Applicant attended the Case Management discussion and represented herself. The Respondent was not present. The Tribunal had sight of service of the Application by advertisement in respect of the Respondent whose current address is unknown. The Applicant requested that the Tribunal proceed in his absence and the Tribunal was prepared to do that as it was satisfied that the notice requirements in terms of Rule 24 of the rules of procedure had been met.

The case management discussion had been continued for the Applicant to lodge further information. Unfortunately although the Applicant had lodged this information the Tribunal had not been aware of this before the matter called at 10 am on 23 October 2020. There was therefore an adjournment to allow the Tribunal to consider the additional information which was submitted.

In dealing with the application on 23rd October 2020 the Tribunal had sight of the application, bank statements, correspondence from East Ayrshire Council, text messages, flight details, emails regarding council tax and two letters in respect of medical appointments.

The Applicant explained that she had not known the Respondent prior to entering into a tenancy agreement with him with effect from 29th July 2019. She had with the assistance of a friend seen that the property was advertised to rent on a website. She could not remember the name of the website. The rent for the property was £375 and she paid the same amount by way of deposit. It was an unfurnished one bedroom flat. She had submitted to the Tribunal evidence of text messages showing that a person whom she said was the Respondent had agreed to accept her as a tenant and had asked for certain contact information. She had lodged bank statements to show that she had in July 2019 paid £ 750 to the Respondent's bank account by way of one month's rent and deposit. Further bank statements lodged revealed that a sum of £375 was paid each month to the Respondent with the last payment made in early December 2019. Mrs Quisaba explained that this was because she had decided to give up the tenancy due to her father's ill health and the need to return to the Philippines to assist him and she had given notice that she would be ending the tenancy by text on 23rd November 2019. The Tribunal was shown a text to that effect. The Applicant had agreed with the Respondent by text that she would clear out her furniture and belongings by 29th December 2019 and that her friend Jhoann Potts would return the key to him if she could not do that herself.

The Applicant stated that she left the property in the first or second week of December 2019 as her father had died and she returned to the Philippines at that time. When she returned to the United Kingdom she did not have a fixed address and had stayed with

her husband and sister in law in Doncaster and also at the home of one of her husband's co-workers in Swindon. She said that this was why correspondence dated after December 2019 was still showing as her being at the property when she had left already. The correspondence with East Ayrshire Council dated 6th January 2020 in relation to council tax discount had been sent to her by email she said. She indicated that she and her husband had travelled to the Philippines between February and March 2020 and on their return it had suited them to stay with others in order that they were not tied into a lease and paying rent when their plans were unclear. The Tribunal had sight of airline ticket confirmation for this trip.

The Applicant explained that she had signed a contract with the Respondent who had told her she would receive a welcome pack and a copy of her tenancy agreement the day after she signed it but she had received nothing at all on paper. She had text him in January 2020 asking for return of her deposit and had been told by text that this would be returned to her within 5 -10 working days after consideration was given to the fact that a key was returned late and locks had to be changed before a new tenant moved in. There was also said to be an issue about council tax due at the property.

The Applicant heard nothing further in respect of her deposit which was not returned. She also indicated that she had not received any information regarding lodging of her deposit within a scheme during or after her tenancy or any other tenancy information as required in terms of Regulation 42 of the 2011 Regulations. She had telephoned the Deposit scheme providers and been advised that her deposit was not held for the property.

In the course of the case management discussion it became clear that the Applicant had lodged a video file with the Tribunal which the Tribunal had not seen, as well as an email regarding her father's state of health. After discussion the Applicant was content that the Tribunal proceed without seeing these as the video she said related to the return of her deposit and not the issue of the breach of duty regarding the deposit and the Tribunal had already heard from her regarding her father's health and subsequent passing.

The Tribunal considered that it had sufficient information upon which to make a decision and that the procedure had been fair.

It was clear on the information the Applicant had provided to the Tribunal that there had been a breach of the duties in Regulation 3 of the 2011 Regulations on the part of the landlord Respondent.

The Tribunal found that the Respondent had failed in his duties in terms of Regulation 3 of the 2011 Regulations in that he had not protected the Applicant's deposit within an approved scheme within the relevant time period and had not provided the information requested in regulation 3(b) within the appropriate timeframe.

The Applicant declined the opportunity to address the Tribunal on the amount of any sanction to be imposed.

Findings in Fact

1. The Applicant and Respondent entered into a tenancy agreement at the property commencing on 29 July 2020.
2. The property is a one bedroom flat and the Applicant rented the property on an unfurnished basis.
3. The rent paid by the Applicant per month was £375 and she paid the same amount, £375 by way of deposit to the Respondent.
4. The tenancy ended with effect from 29 December 2019 and the Applicant paid rent up to and including that date.
5. The tenancy was a relevant tenancy within the meaning of Regulation 3 of the 2011 Regulations.
6. When the Applicant enquired as to the return of her deposit in January 2020 she was advised that this would be returned within 5 to 10 working days when issues around outstanding Council tax and the suggested late return of a key and the requirement to change the locks at the property had been considered.
7. The Applicant did not receive any of her deposit back from the Respondent.
8. The Applicant enquired with the three tenancy deposit scheme authorised providers in Scotland and was advised that none of them had held or still held her deposit.
9. The Applicant did not receive the information required to be given by the landlord in terms of regulation 3(b) of the 2011 regulations at any time during her tenancy.

Reasons For Decision

The Tribunal was satisfied that the Respondent had failed to comply with the duties set out in Regulation 3 of the 2011 Regulations. He had failed to ensure that the deposit was paid into an approved deposit scheme within 30 working days of the start of tenancy and had failed to give information to the applicant in terms of regulation 3(b) of the 2011 regulations. The Tribunal was required to consider what sanction should be made in respect of the failure to comply with the duties under the regulations. The Tribunal had regard to the case of ***Russell – Smith and others V 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 at the end of the day the exercise by the Tribunal of this judicial discretion is a balancing exercise.

The Tribunal weighed all factors and took into account the deposit was unprotected for the period of the Applicant's tenancy, some five months. It was clear that the tenancy had not been managed professionally in that discussion regarding the return of the deposit had simply ceased and despite being told that a copy of the tenancy agreement would be provided for the Applicant she had never received this. The circumstances beyond that which pertained to the Respondent were unknown to the Tribunal as he had not appeared at the Tribunal.

It was not possible for the Tribunal to determine whether this was a deliberate breach of the Regulations and having considered the circumstances including the failure to give the applicant the required information under Regulation 3(b) the Tribunal took the view that the appropriate sanction within its discretion would be a sanction one and a half times the tenancy deposit paid that is a sanction of £562.50.

Decision

The Tribunal determined that the Respondent was in breach of his duties in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The Tribunal sanctioned the Respondent in the sum of £562.50.

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

23.10.20_____
Date