



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

Chamber Ref: FTS/HPC/PR/22/3416

Re: Property at 1/2 6 Muir Street, Renfrew, PA4 8PN (“the Property”)

Parties:

Mr Eoghan Meaney, 34 Stein Square, Bannockburn, Stirling, FK7 8JF (“the Applicant”)

Mrs Karen Clark, 99 Carstairs Street, Glasgow, G40 4JQ (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should be ordered to make payment to the Applicant of the sum of NINE HUNDRED POUNDS (£900)

Background

1. By application dated 19 September 2022, the applicant sought an order in terms of Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”) in respect of an alleged failure by the respondent to comply with those regulations.
2. On 22 September 2022, the application was accepted by the Tribunal and referred for determination by the tribunal.

3. In the application form the respondent was named as both “Clark Family Investments Limited “ as an organisation and Mrs Karen Clark as an individual
4. The tribunal has initially recorded both as respondents in its case management system
5. A Case Management Discussion (CMD) took place on 9 December 2022. The tribunal issued a note after the CMD and reference is made to that note. It was decided that a full hearing would be held on a later date. The conclusion at the CMD was that the Tribunal would be required to make an order for payment in terms of the 2011 Regulations. The only matter to be determined by the Tribunal is the amount of the payment and the identity of the person liable to make that payment.

The hearing

6. The hearing took place on 22 March 2023. The applicant attended personally. The respondent was represented by Ms Caitlin Gillon from Kingsley Wood solicitors.
7. The factual position regarding this application was agreed between the parties.
8. There was no dispute between the parties that there had been a tenancy agreement of the property which commenced on 14 January 2022 and which ended on 3 August 2022.
9. It was conceded by Ms Gillon that the correct landlord was Mrs Karen Clark as an individual. While the company Clark Family Investments Ltd had administered the tenancy, the property was owned by Mrs Clark as an individual and it was accepted that she was the landlord and thus should be the sole respondent.

10. It was agreed that a deposit of £550 had been taken, and it was agreed that the deposit had never been lodged in any appropriate tenancy deposit scheme. The deposit had been returned in full to the tenant at the conclusion of the tenancy.
11. During the hearing, the parties were asked various questions by the tribunal members.
12. Ms Gillon conceded that the landlord was fully aware of her responsibilities under the tenancy deposit scheme but that she had left it to the staff members at the company to deal with the deposit. The company effectively acted as her letting agent. She accepted that an error made and that the deposit had not been lodged. This was an isolated incident and further steps have since been taken to review the policies of the company.
13. Mr Meaney in his response to the tribunal took issue with, one matter set out in an email which had been received from Mrs Gillon the day before the tribunal. He indicated that the email seemed to suggest that the deposit had been returned to him with no attempt being made to deduct any monies from it prior to its return. He indicated this was not correct. He indicated that there had been exchanges of emails between his departure on 3 August and 24 August 2023 in which various suggestions were made by the landlord that some funds should be retained from the deposit. He accepted that all contact had been with employees at Clark Family Investments Ltd and he had no contact at all directly with Mrs Clark at any time
14. It was only when he raised the issue of such a dispute being resolved by the tenancy deposit scheme that it was acknowledged that his deposit had never been lodged, and it was returned to him in full on 25 August.
15. Both parties indicated they were happy for the tribunal to make a decision on the amount to be awarded. Mr Meaney accepted that the failure was not the most egregious breach and that he thought an award at about twice the level of the deposit would be appropriate

16. Both parties accepted the position adopted in the Note from the previous CMD that the only matters at issue were the amount of the award to be made at the identity of the person liable to make that payment.

17. It had been conceded that the person liable for any award is Mrs Karen Clark as an individual. She is the registered owner of the property and she was named in the tenancy agreement as the landlord. It was noted that her contact address was the registered office of the company at 99 Carstairs Street Glasgow. Ms Gillon indicated that any award made would be paid by Mrs Clark.

Discussion and decision

18. This application related to the failure of the Respondent to place a tenancy deposit within an approved tenancy deposit scheme. Landlords have been required since the introduction of the 2011 Regulations to pay tenancy deposits into an approved scheme within 30 working days of the commencement of the tenancy. In this case it was accepted by the Landlord that she had failed to do so. Accordingly she was in breach of the duties contained in Regulation 3 of the 2011 Regulations. Those duties are twofold. There is a requirement to pay the deposit to a scheme administrator and the requirement to provide a Tenant with specified information regarding the tenancy deposit. The Respondent failed in both duties.

19. Regulation 9 of the 2011 Regulations indicates that if a Landlord does not comply with any duty in regulation 3 then the Tribunal must order that a Landlord makes payment to the Tenant of an amount “not exceeding three times the amount of the tenancy deposit”.

20. Accordingly in this case the Tribunal is required to make an order for payment. The only matter to be determined by the Tribunal is the amount of the payment.

21. In this case the Tribunal carefully considered the evidence which had been produced by both parties. There was clear evidence that the respondent had

failed to pay the tenancy deposit into the appropriate scheme for the whole period of the tenancy (a period of approximately seven months) . The deposit has never been lodged in accordance with the requirements of the 2011 Regulations.

22. The Regulations were introduced to safeguard deposits paid by Tenants. They were introduced against a background of Landlords abusing their position as the holder of deposit moneys. The parliament decided that it should be compulsory to put the deposit outwith the reach of both the Landlord and the Tenant to ensure that there was a dispute resolution process accessible to both Landlord and Tenant at the end of a tenancy and which placed them on an equal footing. The Regulations make it clear that the orders to be made by Tribunals for failure to comply with the Regulations are a sanction or a penalty

23. In this case, the Respondent was in clear breach of the 2011 Regulations.

24. The tribunal notes that in a recent Upper Tribunal decision, (*Ahmed v Russel UTS/AP/22/0021 2023UT07* Sheriff Cruickshank indicates (at Para 38) that ***“previous cases have referenced various mitigating or aggravating factors which may be considered relevant. It would be impossible to ascribe an exhaustive list. Cases are fact specific and must be determined on such relevant factors as may be present”***

25. The sanction to be imposed is intended to mark the gravity of the breach which has occurred. It should reflect the level of overall culpability in each case measured against the nature and extent of the breach of the 2011 Regulations. The tribunal is required to determine a fair and proportionate sanction based on the facts as recorded.

26. The tribunal was not persuaded that the award should be made at the maximum level available to the tribunal which based on the deposit being £550 would have been £1,650

27. In this case, the deposit was unprotected for the entire period of the lease. The tribunal does accept that this was an isolated incident and notes that the

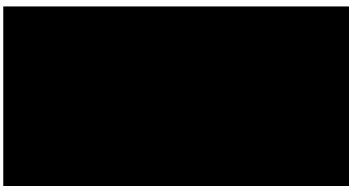
respondent has expressed remorse and has apologised for the failure. Ultimately, the entire deposit was returned to the tenant. The tribunal takes the view that this was not the most egregious breach of the 2011 Regulations. The tribunal accepts that the failure to lodge the deposit was caused by a simple administrative error.

28. However, all landlords should be aware that deposits should be lodged and that they should have systems in place to try to avoid such administrative errors. The failure to lodge the deposit in this case was moderately serious.

29. In the circumstances, the tribunal determines that the appropriate amount of the award to be made should be £900 which reflects the seriousness of the breach but acknowledges the mitigatory factors put forward by the respondent.

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.



**Jim Bauld
Legal Member/Chair**

**22 March 2023
Date**