

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under The Tenancy Deposit Schemes (Scotland) Regulations 2011 as amended by The Tenancy Deposit Schemes (Scotland) Amendment Regulations 2019. (“the Regulations”).

Chamber Ref: FTS/HPC/PR/23/3855

Re: Property at 6 Nithsdale View, Thornhill, DG3 5DX (“the Property”)

Parties:

Mrs Elizabeth Hannett and Mr Paul Hannett, 3 Waulkmill Park, Carronbridge, Thornhill, DG3 5BA (“the Applicants”)

Mr Fin Somerville, The Smithy, Watling Street, Leintwardine, Craven Arms, SY7 0LW (“the Respondent”)

Tribunal Member:

Martin McAllister (Legal Member) (“the tribunal”)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the sum of £900 to the Applicants.

Background

- 1. On 31 October 2023, the Tribunal received an application from the Applicants seeking payment of a sum in compensation under regulation 10(a) of the Regulations. The date of the case management discussion was intimated to the Respondent. The Respondent submitted written representations by email on 30 January 2024.**
- 2. A case management discussion was held by teleconference on 6 February 2024.**

Attendance

- 3. The Applicants and the Respondent attended.**

Preliminary Matters

4. The legal member explained the purpose of a case management discussion.
5. Prior to commencement of the case management discussion, the Respondent disclosed to the clerk that he was telephoning from Turkey. After commencement of the case management discussion, parties were advised of the difficulties that this created. The state of Turkey objects to the taking of oral evidence from within its jurisdiction. Mr Somerville indicated that he expected to be in Turkey for the foreseeable future.
6. The tribunal did not enter into any discussion about the merits of the application but stated that, from the application and representations from the Respondent, it was accepted that the tenancy deposit had not been lodged with an approved tenancy deposit scheme until after the tenancy had terminated. Parties agreed this to be the case. Parties were advised of the relevant terms of paragraphs 3 and 9 of the Regulations. The Applicants and the Respondent indicated that they would be content for the application to be determined on the basis of the application, papers lodged with it and the written representations of the Respondent.
7. The tribunal stated that it saw no reason for a Hearing to be fixed to determine the application.
8. Parties left the case management discussion.

Determination

9. The tribunal had regard to the following documents:
 - i) Application dated 13 October 2023 and submitted on 31 October 2023;
 - ii) Model Scottish Secure Tenancy Agreement dated 9 May 2021;
 - iii) Certificate from LPS Scotland confirming that deposit held.
 - iv) Email from Respondent dated 30 January 2024 containing representations.

10. The Law

The Tenancy Deposit Schemes (Scotland) Regulations 2011

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.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

(a) in respect of which the landlord is a relevant person; and

(b) by virtue of which a house is occupied by an unconnected person,

unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

9. *(1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal for Scotland 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 by summary application and must be made 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 —*

(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 sheriff 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.

Findings in Fact

10.1 The Applicants and the Respondent were parties to a Private Residential Tenancy Agreement for the Property.

10.2 The tenancy commenced on 9 April 2021 and came to an end on 4 September 2023.

10.3 The Applicants paid a tenancy deposit of £600 to the Respondent prior to commencement of the tenancy.

- 10.4 The Respondent did not lodge the tenancy deposit with an approved tenancy deposit scheme until after the tenancy had been terminated.
- 10.5 The tenancy deposit was repaid to the Applicants upon the termination of the tenancy.

Finding in Fact and Law

11. The tenancy deposit required to be paid to an approved tenancy deposit scheme by 21 May 2021 which was thirty working days from commencement of the tenancy.

Reasons

12. Parties entered into a tenancy agreement. Unusually, the tenancy agreement was a Model Scottish Secure Tenancy Agreement. Such a document is only applicable where a tenancy is being granted by a social landlord such as a local authority or a Housing Association. Notwithstanding the deficiencies in the documentation, the tenancy (by default) is a private residential tenancy governed by the Private Housing (Tenancies) (Scotland) Act 2016.
13. In his written representations, the Respondent did not dispute that he had received a deposit of £600 but stated at the termination of the tenancy that “it then came to light we had made an error by not placing the deposit into a protection scheme.” The representations state Ainslie had offered to pay the deposit direct to the Applicants but they had wanted it to be paid into a tenancy deposit scheme. The representations do not state who Ainslie is but it is assumed that she is the representative or partner of the Respondent.
14. The certificate from LPS Scotland is dated 18 September 2023. The tribunal accepts that this is the date on which the deposit of £600 was paid into the scheme. This is despite the error contained within the certificate which states that the deposit was received on 9 April 2021. This is clearly an error because the Respondent accepts that the tenancy deposit was not paid into an appropriate scheme until September 2023.
15. The Applicants state in their application that the tenancy deposit was returned to them on 19 October 2023.
16. The Applicants state in their application that they are seeking an order requiring the Respondent to pay them a sum equivalent to three times the monthly rent.
17. The tribunal determined that the Respondent had not complied with the Regulations. He had not lodged the deposit of £600 with an approved

tenancy deposit scheme within thirty days of the beginning of the tenancy.

The Sanction

- 18. The creation of regulations to cover tenancy deposits was to protect tenants' funds and provide a structured process of dispute resolution. The Respondent received the tenancy deposit and did not pay it into an approved tenancy deposit scheme within thirty days of the beginning of the tenancy.**
- 19. The Regulations are clear in stating that, where there is a breach such as this, the Tribunal must make an order requiring a Landlord to pay a Tenant a sum not exceeding three times the amount of the tenancy deposit. The amount is a matter of judicial discretion and must reflect what is a fair, proportionate and just sanction, having regard to the purpose of the Regulations and the gravity of the breach. It is a balancing act.**
- 20. In this particular case, the tribunal had regard to the fact that the deposit was unprotected for the whole tenancy.**
- 21. The tribunal had regard to and adopted the approach of the Court in Russell-Smith and Others v Uchegbu (2016) SC EDIN 64 where the Sheriff had effectively stated there to be two broad aspects to the sanction. The first was the period of time the deposit was unprotected and the second is a sum to reflect a weighting taking into account the particular circumstances of the case including the landlord's experience etc.**
- 22. The deposit was unprotected for the whole of the tenancy and it is considered that this is an aggravating factor and that it would be appropriate to find that £600 is a proportionate sum to reflect this part of the sanction.**
- 23. In determining the balance of the sanction, the tribunal had regard to all the factors before it.**
- 24. The Respondent's position is that he made an error by not placing the deposit into an appropriate scheme. No information was before the tribunal as to how experienced the Respondent is as a landlord but the representations would seem to indicate that he is inexperienced. In Jenson v Fappiano, 2015 SCEDIN6, Sheriff Welsh, at paragraph 18, stated that "amateur landlords" should recognise that inexperience or naivete with regard to the Regulations should not exempt them from compliance.**
- 25. The Applicants had the tenancy deposit returned to them and suffered no financial penalty but their tenancy deposit was at risk.**

- 26. The tribunal had no evidence that the Respondent's failure to comply with the Regulations was wilful or flagrant.**
- 27. Taking all factors into account, the tribunal determined that, taking the particular circumstances into account, the sum of £300 would be appropriate to apply to the second part of the sanction.**
- 28. The Tribunal determined to make an Order requiring the Respondent to pay the sum of £900 to the Applicants.**

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.

6 February 2024