



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

**Chamber Ref: FTS/HPC/PR/23/2855**

**Re: 25 Lumley Place, Grangemouth FK3 8BW (“the Property”)**

**Parties:**

**Darren Hepburn and Chelsea Main, 38 Allermuir Walk, Livingston EH54 9FT (“Applicant”)**

**Scott Lyons, 18 Braehead, Boness, West Lothian EH51 9DN (“Respondent”)**

**Alistair Lyons, 28 Bramble Avenue, Larbert FK5 4ZL (“Respondent’s Representative”)**

**Tribunal Members:**

**Joan Devine (Legal Member)**

**Decision :**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay to the Applicant the sum of £1,125.**

**Background**

1. The Applicant made an application in Form G (“Application”) dated 15 August 2023 and lodged on 21 August 2023 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“Rules”) stating that the Respondent had failed to timeously lodge a tenancy deposit in an appropriate scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“2011 Regulations”). The documents produced to the Tribunal by the Applicant were:
  - A private residential tenancy agreement (“PRT”) between the Applicant, the Respondent dated 28 September 2022 and which commenced on 28 September 2022.
  - Copy email from Mydeposits Scotland dated 15 August 2023 stating they did not hold the Applicant’s deposit for the Property.

- Copy email from Letting Protection Scotland dated 14 August 2023 stating they did not hold the Applicant's deposit for the Property.
  - Copy email from Safe Deposits Scotland dated 11 August 2023 stating they did not hold the Applicant's deposit for the Property.
  - Screenshot of a text from the Applicant to the Respondent noting the tenancy would end on 31 August 2023.
2. The Respondent's Representative lodged a written submission on 14 November 2023. A Case Management Discussion ("CMD") took place on 7 December 2023. Reference is made to the note of the CMD. The outcome was that a further CMD was fixed to allow the application to be served on the Respondent at his home address. The application was served on the Respondent by sheriff officer on 25 April 2024.

### **Continued CMD**

3. A CMD took place on 31 May 2024 by conference call. The Applicant was in attendance as was the Respondent's Representative. Mr Hepburn and Mr Lyons both said that they were familiar with the 2011 Regulations. Mr Lyons confirmed that the Respondent is his older brother.
4. The Tribunal noted that the tenancy commenced on 28 September 2022. Mr Hepburn confirmed that was the case and said he paid the deposit of £750 to a letting agent shortly before the tenancy commenced. He said the tenancy ended on 31 August 2023. He said the deposit was repaid to him some time between 14 and 31 August 2023. He said £75 was deducted. He said he did not agree with the deduction but was unable to object via the scheme process.
5. Mr Lyons told the Tribunal that the Respondent has one other rental property and he has two. He said deposits are taken for the properties and lodged in approved schemes. He said that the deduction of £75 from the deposit related to cleaning costs. He said the Property was not properly cleaned when the tenancy ended. He said that he managed the Property. The deposit was paid to the letting agent who passed the deposit to him along with the initial rental payment. He said the sums received were lodged in a letting account. He said he has separate accounts for each property. He said he normally lodges the deposit with Safe Deposits Scotland within 30 days of the tenancy commencing.
6. As regards the failure to lodge the deposit in an approved scheme Mr Lyons said that this was an oversight due as he was distracted by family matters. Mr Lyons said that his father was diagnosed with cancer and died at the end of 2023. He said he assisted with caring for his father who was under going

chemotherapy at the time the deposit was received. He said that also at that time he was going through a divorce. He said he has two children. He said the upset and upheaval distracted him from his obligations. He said it was only when Mr Hepburn asked him about the deposit at the end of the tenancy that he logged onto My Deposits Scotland and realised it had not been lodged.

7. Mr Lyons said that the issues regarding his father equally applied to the Respondent. He said that the Respondent had lived with his father and stepmother. He said the Respondent assisted with caring for his father and continues to live with his stepmother.
8. Mr Hepburn said that he sought the maximum penalty of three times the deposit. Mr Lyons said that would be excessive.
9. The Tribunal expressed the view that it had sufficient information to proceed to make a decision without the need for a further Hearing. The Parties stated that they were content for the Tribunal to make a decision on the basis of the information presented.

### **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement which commenced on 28 September 2022.
2. The Applicant paid to the Respondent a deposit of £750 on or about 28 September 2022.
3. The deposit was not paid to the administrator of an approved scheme in compliance with the 2011 Regulations.
4. The deposit was returned to the Applicant minus a deduction of £75 between 14 and 31 August 2023.
5. At the time of receiving the deposit the Respondent was assisting with care for his father who had been diagnosed with cancer.

### **Relevant Legislation**

10. Regulation 3 of the 2011 Regulations provides *inter alia* :

*"(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.."*

11. Regulation 9 of the 2011 Regulations provides:

*"(i) A Tenant who has paid a tenancy deposit may apply to the First Tier Tribunal for an order under Regulation 10 where the Landlord did not comply with any duty in Regulation 3 in respect of that tenancy deposit.*

*(ii) An Application under paragraph 1 must be made no later than three months after the tenancy has ended."*

12. Regulation 10 of the 2011 Regulations provides *inter alia* :

*"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"*

### **Reasons for the Decision**

13. Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme administrator of an approved scheme within 30 working days of the beginning of the tenancy, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. The Tribunal was satisfied that the Respondent did not lodge the deposit with an approved scheme.

14. The amount to be awarded is a matter for the discretion of the Tribunal having regard the factual matrix of the case before it. The Tribunal considered the comments of Sheriff Ross in *Rollett v Mackie* UTS/AP/19/0020. At para 13 and 14 he considered the assessment of the level of penalty and said:

*"[13] In assessing the level of a penalty charge, the question is one of culpability, and the level of penalty requires to reflect the level of culpability. Examining the FtT's discussion of the facts, the first two features (purpose of*

*Regulations; deprivation of protection) are present in every such case. The question is one of degree, and these two points cannot help on that question. The admission of failure tends to lessen fault: a denial would increase culpability. The diagnosis of cancer also tends to lessen culpability, as it affects intention. The finding that the breach was not intentional is therefore rational on the facts, and tends to lessen culpability.*

*[14] Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals. None of these aggravating factors is present."*

15. The Tribunal noted that the Respondent admitted that there had been a breach of the 2011 Regulations and that the deposit, minus a deduction of £75, was paid to the Applicant prior to the end of the tenancy. There was no evidence before the Tribunal of repeated breaches or fraudulent intent. The explanation given for the failure to comply with the 2011 Regulations was the Respondent and his Representative being distracted due to the illness of their father. The Tribunal accepted the explanation provided for the Respondent's non-compliance and was of the view that there were no aggravating factors present in this case of the sort described in *Rollett v Mackie*.
16. Having regard to factors put forward by both parties the Tribunal determined that the sanction should be £1,125 (1.5 times the deposit) in the particular facts and circumstances of this case.

## **Decision**

The Tribunal granted an Order for payment of £1,125 in terms of Regulation 10(a) of the 2011 Regulations.

## **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.**

**Joan Devine  
Legal Member**

**Date: 31 May 2024**