



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/25/0816

Re: Property at 24/6 HALMYRE STREET, LEITH, EDINBURGH, EH6 8QD (“the Property”)

Parties:

MISS AMY GALLAGHER, MISS ROBYN MCLAUGHLIN, 128/8 DUKE STREET, LEITH, EDINBURGH, EH6 8HR; FLAT 15 The Cascade 200A Bonnington Road, Edinburgh, EH6 5GH (“the Applicants”)

PLACES FOR PEOPLE SCOTLAND LIMITED TOUCHSTONE PROPERTY MANAGEMENT, 1 HAY AVENUE, EDINBURGH, EH16 4RW (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent had failed to comply with the duties in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 to pay a tenancy deposit to the scheme administrator of an approved scheme within the prescribed time scale. The tribunal also determined that the information required to be given to the Applicants in terms of regulation 3 within the same timescales had not been given to the Applicants in this application. The tribunal made an order requiring the Respondent to pay the Applicants the sum of £400 by way of sanction for the breach of the Regulations.

Background

1. This application for sanction of a landlord in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 was first received by the Tribunal on 24th February 2025

and accepted by the Tribunal on 10th March 2025. A case management discussion was fixed for 23rd July 2025 at 2pm.

Case Management Discussion

2. The Applicant Ms Gallagher attended the case management discussion, and the Respondent was represented by Ms Kennard of Touchstone Property Management agents for the landlord.

3. The Tribunal had sight of the application, a paper apart, a tenancy agreement, proof of payment of a deposit of £1015.42 in the form of two screenshots of bank payments, a letter from the Respondent to the tenants, easy read tenancy notes, an electrical report, a minor electrical works certificate, an EPC, a gas safety certificate and a notification from Safe Deposits Scotland.

4. The parties had entered into a private residential tenancy at the property with effect from 11th April 2024. The monthly rent payable was £850 per month payable on the first of each month. The Respondents lodged proof of payment of the deposit, and this was not disputed by the Respondent. The deposit paid was £1015.42 and this was paid by the Applicants paying half each of this amount around the start of the tenancy.

5. The tenancy appeared to have ended on 11th February 2025, and the Tribunal had sight of email confirming this.

6. The tenancy agreement set out that the tenancy deposit paid in relation to this tenancy would be held in a secure tenancy deposit scheme and indicated which provider would be used.

7. The Applicant Ms Gallagher had lodged a notification which had been received from Safe Deposits Scotland dated 19th February 2025 which confirmed the end of the tenancy date and also that the deposit had been lodged with their Scheme on 2nd August 2024, out with the required time frame in the Regulations. This notification also explained to the Applicants how to lodge an application for sanction with the First Tier Tribunal which they did on 24th February 2025, within the statutory time limit for making such an application.

8. By means of written representations dated 15th May 2025 the Respondent accepted that the deposit had been paid into a tenancy deposit scheme later than required by the Regulations. At the case management discussion Ms Kennard accepted that Touchstone had not given the Applicants the required information regarding the tenancy within the time frame as also required in terms of Regulation 3 of the 2011 Regulations.

9. At the case management discussion Ms Kennard advised that the system used by Touchstone expected all deposit monies to be received in order to set up a new tenancy. Here not all the money was received until a few days after the start date of the tenancy. Within 3 days of the start date of the tenancy a payment request was usually sent to the tenancy deposit Schemes provider used by Touchstone, In this case the payment was missed as the system had not noted receipt of all of the deposit. An internal check picked up that the deposit had not been lodged, and this was rectified

right away on 2nd August 2024. The prescribed form with the required information to tenants as to the deposit was sent later to them, again out with the required time period and this had not been picked up either. Ms Vennard said this was an issue with staff training as the required form should have been picked up at the time the failure to pay the deposit into a scheme was picked up. She said that at Touchstone Edinburgh they managed a portfolio of approximately 3000 rental properties and have around 50 new tenancies starting each month. She said that they therefore had processes in place to ensure deposits are registered, and within a timely manner. Unfortunately, on this occasion there was delay but they would use this mistake to improve their service going forward. The Applicants had had their deposit returned to them shortly after the end of the tenancy.

10. The Applicants did not dispute that that deposit had been returned to them after the end of the tenancy

11. The Respondent having admitted the breach of the Regulations the Applicants were given an opportunity to address the Tribunal on the question of sanction. Ms Gallagher had requested that the sanction be twice the level of the deposit paid but accepted that this was an administrative error not intended to impact the tenants and there had been no repercussions.

12. For the Respondent Ms Kennard having accepted the breach of the Regulations stressed that this has been a mistake, the deposit had been paid into a scheme just over 4 weeks late, the error had been caught and rectified and apologised to the Applicants.

13. The Tribunal considered that it had sufficient information upon which a decision could be made and that the proceedings had been fair.

Findings in Fact

14. The parties entered into a private residential tenancy at the property with effect from 11th April 2024 and this agreement ended on 11th February 2025.

15. The tenancy was a relevant tenancy in terms of the tenancy Deposit Schemes (Scotland) Regulations 2011.

16. The tenancy agreement required the payment of a deposit of £1015.42, and this was paid to the Respondent by 15th April 2024.

17. The Respondent did not pay the Applicants' deposit into an approved tenancy deposit scheme until 2nd August 2024, over 4 weeks after the maximum time allowed for payment of the deposit into an approved scheme by the 2011 Regulations.

18. The Respondent also provided the information required to be given to the Applicants in terms of Regulations 3 and 42 of the 2011 regulations outwith the required time period.

19. The Respondent Touchstone Property Management manages over 3000 rental properties and commences around 50 new tenancies per month,

20. The Respondent's system usually organises payment of a deposit to an approved scheme within three days of the start of a tenancy but did not do so on this occasion as part of the deposit had yet to be received at the start of the tenancy.

21. The Respondent has used this error to improve their service and apologise to the Applicants.

22. After the end of the tenancy the Respondent returned the full deposit to the Applicants.

The Relevant Law

23. Rule 3(1) of the 2011 Regulations provides that "a landlord who has received the 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

24. A tenancy deposit is defined in the 2011 Regulations is having the meaning conferred by section 120(1) of the Housing Scotland Act 2006 (" the 2006 Act") which states:-

"A Tenancy deposit is a sum of money held as security for –

- (a) the performance of any of the occupant's obligations arising under or in connection with a tenancy or an occupancy arrangement, or
- (b) the discharge of any of the occupant's liabilities which so arise

Reasons for Decision

25. The tribunal considered what the appropriate sanction would be in the circumstances based on all of the evidence before it. When considering the appropriate level of sanction to be made in the circumstances the tribunal considered the need to proceed in a manner which is fair, proportionate and just having regard to the seriousness of the breach (Jensen v Fappiano 2015 GWD 4 – 89)

26. The tribunal noted the view expressed by Sheriff Ross in Rollet v Mackie [2019 UT 45] that the level of penalty should reflect the level of culpability involved. The tribunal considered whether there were aggravating factors which might result in an award at the most serious end of the scale as noted by Sheriff Ross in Fappiano. In this case it was not apparent on the basis of the information before the tribunal that there was any malicious or fraudulent intention on the part of the Respondent in failing to protect the deposit on time or give the Applicants the required information under the Regulations.

26 It appeared that an error in the Respondent's system has caused the delay and breach of duty and that staff training was required. The mistake was being used now as a means of improving service.

27. The deposit paid by the Applicants was returned to them sometime after the end of the tenancy.

28 Taking all of these considerations into account the tribunal determined that an order at the maximum level was not appropriate this being an error on the part of the Respondent which had to an extent been rectified. The Respondent had caught the error regarding payment of the deposit and rectified it. The period of time the deposit was unprotected was small and the Respondents had admitted the breach. The tribunal considered it was inappropriate to make an order at the higher end of the scale in the light of the low level of culpability here. The tribunal made an order requiring the Respondent to pay to the Applicants the sum of £400, a sum reflecting that this had simply been an error.

Decision

The tribunal determined that the Respondent had failed to comply with the duties in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 to pay a tenancy deposit to the scheme administrator of an approved scheme within the prescribed time scale. The tribunal also determined that the information required to be given to the Applicants in terms of regulation 3 within the same timescales had not been given to the Applicants in this application. The tribunal made an order requiring the Respondent to pay the Applicants the sum of £400 by way of sanction for the breach of the 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.

Valerie Bremner

Legal Member/Chair

23.7.25
Date
