



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

Chamber Ref: FTS/HPC/CV/18/1147

**Re: Property at 14 Auchendores Avenue, Port Glasgow, Renfrewshire, PA14
6NU (“the Property”)**

Parties:

**Miss Pamela Gray, 76 Auchenbothie Road, Port Glasgow, PA14 6JD (“the
Applicant”)**

**Mrs Patricia Crighton and Kenneth Crighton, Valley View Farm, Dougliehill
Road, Port Glasgow, PA14 5XF (“the Respondent”)**

Tribunal Members:

Alison Kelly (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Applicants should pay to the Respondent the
sum of £645, being one and a half times the deposit.**

Background

The case called for a full hearing, following a Case Management Discussion which
had taken place on 23rd August 2018.

The notes from the Case Management Discussion (“CMD”) outline the issues which
were to be resolved, and the facts which were already agreed.

The Hearing

The Hearing was attended by the Applicant, and she was represented by Ben
Christman of the Legal Services Agency. The Respondent was accompanied by her
husband, Kenneth Crighton.

The Convenor introduced herself and the Housing Member, Mrs Dickson, and explained how the hearing would proceed.

The Convenor had noted that at the CMD the Respondent had pointed out that her husband, Kenneth Crighton was a joint landlord and therefore should be a joint respondent. The Convenor asked Mr Crighton if he consented to the application being amended so that he was a joint respondent. Mrs Crighton said that she felt that the Applicant should have to start again and serve all the papers on Mr Crighton. The Convenor pointed out that Mr Crighton was present and knew what was happening, thereby negating the need for service on him, and he then agreed to the application being amended.

Mr Christman was asked to address the tribunal on behalf of the Applicant. He had lodged written submissions, and took the Tribunal through them. He contended that the Respondent had breached regulation 3 of the Tenancy Deposit Regulations ("TDR") by not lodging the Applicant's deposit in an approved scheme within 30 days. He submitted that in terms of Regulations 10 the Tribunal must award up to three times the deposit where the landlord had not complied.

He submitted that the Tribunal should award three times the amount as the landlord had failed to comply, the Applicant rented the property for a considerable period of time during which her deposit was not protected, the Respondent had retained part of the deposit, and if it had been placed in a scheme the administrator would have dealt with any proposed deductions, the failure to register the deposit was not accidental and sanction for failure to register deposits is not only punishment but also acts as a deterrent for future non compliance by this and other landlords.

Mr Christman advised the Tribunal that the Applicant was withdrawing the second part of her claim, and accepted the deduction of £50 from the deposit.

Mr Christman submitted copies of recently decided cases in relation to the amount to be awarded.

Mrs Crighton was asked for her position. She told the tribunal that from the outset the applicant had been fully aware that her tenancy deposit was not lodged in a scheme. She said that the Applicant had asked for the deposit to be returned in cash. She asked for this at the outset of the tenancy. Mrs Creighton felt aggrieved, and that she was being manipulated by the Applicant. She said that the applicant had not been truthful in her initial application nor at the CMD. She said that the Applicant had left the property on 30th April and there were still items of her property in the hut. The hut was later broken in to, and when Mrs Crighton had contacted the Applicant to advise her the Applicant said it was her uncle who had broken in to the hut to get her belongings. Mrs Crighton also referred to photographs she had lodged showing items left behind by the Applicant. She felt that the Applicant had displayed a bad attitude towards her. She said that he had offered to put a cheque for the balance of the deposit through the applicant's aunt's door (she lived next door to the property address) but the Applicant had refused and insisted the deposit be returned in cash. Mrs Crighton reiterated that the Applicant wished the deposit to be kept in cash and knew it wasn't deposited in a scheme.

Mrs Crighton then told the Tribunal that she had two rental properties and had recently bought a third. She was in the habit of renting to family members and close friends. This was the first property she had rented out to a non family member. She had previously rented the property to a woman named Heidi, and she conceded that she had not paid Heidi's deposit in to a scheme.

The Applicant was asked directly by the tribunal if she had asked that the deposit be returned in cash, she said she had never had such a discussion with Mrs Crighton.

Mr Crighton was then asked if he had anything to add. He stated that he supported his wife's position.

The tribunal adjourned to consider their decision and then reconvened to give that decision.

Findings in Fact

1. The parties entered in to a lease for the Applicant to rent the property from the Respondents, which ran from 22nd April 2017 until 30th April 2018.
2. The Applicant paid a deposit of £430.
3. The Respondents did not lodge the deposit in an approved scheme.
4. The Respondents returned the sum of £380 to the Applicant at the end of the tenancy, having deducted £50.

Reasons for Decision

The Respondents obviously felt aggrieved by the behaviour of the applicant at the end of the tenancy, and felt that the Applicant had manipulated them, and the situation regarding the deposit to her advantage.

However, whether or not the Applicant had asked for the deposit to be retained in cash, and the tribunal is making no finding in fact regarding this, the Respondents had an absolute duty to deposit the money in an approved scheme.

Rule 3 of the TDR states:

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.

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.

In terms of Rule 3(1) the landlord MUST place the deposit in a scheme.

Rule 10 states:

10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—

(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

Rule 10(a) states that the Tribunal MUST order payment if satisfied that the landlord did not comply.

The tribunal appreciated the feelings of the respondents, but those feelings did not mitigate their responsibilities.

The Tribunal decided to award 1.5 times the deposit, This was calculated on the basis that the Respondents had an absolute duty in terms of TDR to deposit the money in approved scheme, Mrs. Crighton had admitted that she had previously taken a deposit from a tenant and not lodged it, Mrs Crighton stated that she had three rental properties, and therefore was an experienced landlord, and that the

sanction provided for in the Regulations is not only a punishment, but also a deterrent.

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.

Alison Kelly

Legal Member/Chair



Date

5/10/18

*Insert or Delete as required