



**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/19/1172

Re: Property at 180 Kinnell Avenue, Glasgow, G52 3RU (“the Property”)

Parties:

Miss Nicola Heaney, 104 Penilee Terrace, Glasgow, G52 4BU (“the Applicant”)

**Mr Gavin Logan, 28 Parkmeadow Avenue, Glasgow, G53 7ZG (“the
Respondent”)**

Tribunal Members:

**Fiona Watson (Legal Member), Sandra Brydon (Ordinary Member) and Helen
Barclay (Ordinary Member [Reviewer])**

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order is granted against the Respondent(s) for
payment to the Applicant in the undernoted sum:**

ONE THOUSAND POUNDS (£1,000) STERLING

- Background
1. An application was submitted to the Tribunal under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. Said application sought an order be made against the Respondent on the basis that the Respondent had failed to comply with his duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).

- The Case Management Discussion
2. A Case Management Discussion (“CMD”) took place on 19 July 2019. The Applicant was unable to attend due to working offshore and was represented by Carla Jeffrey. The Respondent was personally present and represented herself.
 3. The Applicant sought an order from the Tribunal on the basis that the Respondent had failed to comply with his duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the 2011 Regulations.
 4. The Applicant submitted that she had entered into a tenancy with the Respondent which commenced 30 November 2016. A copy of the tenancy agreement was lodged with the application. The Applicant paid a £500 deposit to the Respondent’s representative at the start of the tenancy. £100 had been paid by bank transfer as a “holding deposit” to secure the property and the subsequent £400 had been paid in cash at the start of the tenancy. The sums were paid to Miss Jeffrey, who acted as the Respondent’s representative in setting up the tenancy due to the Respondent working away offshore at the time. The Applicant raised the issue of the deposit not having been secured in a tenancy deposit scheme with the Respondent’s representative at the end of 2016 and early 2017 but this wasn’t rectified. The Respondent’s representative had advised her that she was unaware of the Regulations and of the Landlord’s obligations thereunder. The Applicant moved out of the Property on 7 March 2019. The deposit was returned in full to the Applicant, paid in cash.
 5. The Respondent’s representative, Miss Jeffrey, advised that she was the Respondent’s ex-partner. She had arranged the tenancy for the Respondent as he was working off-shore at the time. She was unaware of the existence of the Regulations. She was unaware that the Respondent did not normally take a deposit from tenants. She submitted that he would normally only take the first month’s rent up front. She confirmed that the deposit had been paid directly to her and she subsequently transferred this to the Respondent who held it himself. When asked by the Tribunal, she confirmed that the Respondent rented out 4 or 5 properties in total, that he was aware of the Regulations and was aware that he should have lodged the deposit into a tenancy deposit scheme but he still failed to do so. She submitted he had been busy with work and had forgotten to lodge the deposit.

- Findings in Fact

6. The Tribunal made the following findings in fact:

- (a) The parties entered into an assured tenancy which commenced 30 November 2016;
- (b) The Applicant paid a deposit of £500 to the Respondent's representative;
- (c) The Respondent failed to lodge the deposit of £500 into an approved tenancy deposit scheme;
- (d) The Tenancy ended on 7 March 2019;
- (e) The Deposit had been returned to the Applicant in full following the termination of tenancy.

- Findings in Law

7. The Tribunal made the following findings in law:

7.1 The Respondent was in breach of his duties under Regulation 3 of the 2011 Regulations, which states as follows:

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.*

7.2 The Tribunal must grant an order in terms of Regulation 10 which states as follows:

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.

- Reasons for Decision

8. The Tribunal was satisfied that the Respondent was in breach of Regulation 3 as aforesaid. This was by the Respondent's representative's own admission. The Tribunal was not satisfied that the circumstances surrounding the Respondent's failure to lodge the deposit were sufficiently serious to persuade it to grant an order at the maximum level allowed, being three times the amount of the deposit.

9. The 2011 Regulations were introduced to provide security for tenants in paying over deposits to landlords and to address an issue with some landlords taking tenancy deposits and then failing to pay them back where they were lawfully due at the end of the tenancy. The 2011 Regulations also provide that parties have access to an independent and impartial dispute resolution mechanism within a scheme to address any deposit deductions which require to be considered.

10. By his failure to lodge the deposit into an approved tenancy deposit scheme, the Respondent has deprived the Applicant of the opportunity firstly to have her deposit securely held, and secondly, to have access to an impartial and free arbitration system within a scheme to determine where or not any deductions should be validly made.

11. The Tribunal noted that the Respondent was aware of his obligations to lodge the deposit in terms of the Regulations but had simply failed to do so. The

Tribunal was not satisfied that there was any good reason for the deposit not having been properly lodged. The Tribunal did take into account the fact that the deposit had been returned the Applicant in full.

12. No submissions were made to persuade the Tribunal that there had been any malice on the part of the Respondent in his dealings with the deposit, nor intention to deprive the Applicant of her deposit.

- Decision

13. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent(s) for payment to the Applicant in the undernoted sum:

ONE THOUSAND POUNDS (£1,000) STERLING

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.

Fiona Watson

Legal Member/Chair

19 July 2019

Date