



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulation 3 of the Tenancy Deposit
Schemes (Scotland) Regulations 2011 (“the Regulations”)**

Chamber Ref: FTS/HPC/PR/19/2985

**Re: Property at Flat 4, Caird House, 4 Scrimgeour Place, Dundee, Angus, DD3
6TU (“the Property”)**

Parties:

**Miss Shona Maxwell, Ms Jayne Cuthertson, 2 The Old Stables at Newbold
Fields House, Dunston Road, Chesterfield, S41 9RW; 24a Cloanden Place,
Kirkcaldy, KY2 5PA (“the Applicant”)**

**Mr Stephen Spence, 130 Westerton Avenue, Bearsden, G61 1HR (“the
Respondent”)**

Tribunal Members:

Ewan Miller (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that (a) an order for payment be granted in favour of the
Applicant against the Respondent in the sum of ONE THOUSAND SIX
HUNDRED AND THIRTY POUNDS (£1,630) ONLY and (b) the Respondent place
the sum of EIGHT HUNDRED AND FIFTEEN POUNDS (£815) ONLY in to an
approved scheme within the terms of the Regulations to allow the question of
the allocation of the deposit between the parties to be determined via the
adjudication scheme run by the approved scheme**

Background

The Applicants had been the tenant of the Property, which was owned by the Respondent. The tenancy had terminated in July 2019. Subsequent to that, the Applicant had requested the return of a deposit of £815 that had been paid as part of the tenancy. A dispute had arisen between the parties in relation to alleged works outstanding at the end of the tenancy and the deposit had not been returned. The

Applicant subsequently applied to the Tribunal alleging that the Respondent had failed to adhere to the Regulations and place their deposit in to a registered deposit scheme as required by the Regulations

The Tribunal had before it the following information:-

- The Applicant's application to the Tribunal dated 23/9/19;
- Copy of the lease between the parties;
- Copy letters dated 22 August and 13 September 2019 by the Applicant to the Respondent requesting return of the deposit and a copy email response dated 19 September 2019 from the Respondent;
- Both parties submitted copies of numerous text messages between them;
- A copy of two letters from a GP and the NHS in relation to a medical condition of the Respondent;
- The Respondent had submitted a supporting statement from the Respondent's partner, a letter from the father of a former tenant as well as text messages from other tenants of the Respondent.

Case Management Discussion ("CMD")

The Tribunal held a CMD at the Dundee Carers Centre, Seagate, Dundee on 25 November 2019 at 2pm. Ms Cuthbertson was present and accompanied by her father. Ms Maxwell was not present but was represented by her father. The Respondent was present and represented himself.

Findings in Fact

The Tribunal found the following facts to be established:-

- the Respondent was the owner of the Property;
- the Applicant had been tenants of the Respondent at the Property;
- a deposit of £815 had been paid by the Applicant at the start of the tenancy;
- the Respondent had not put the deposit in to an approved scheme as required by the Regulations;
- the Respondent had retained the deposit in relation to alleged repairs required at the end of the tenancy;
- there had been a breach of the Regulations by the Respondent

Reasons for the Decision

In terms of the Regulations, a landlord is required to place a deposit in an approved scheme within 30 days of the commencement of the tenancy. The Respondent was open and frank in this regard and admitted that he had not placed the deposit in an approved scheme. He also confirmed that he had retained the deposit at the end of the tenancy, as he was of the view that there were works required to the Property as a result of alleged failures on the part of the Applicant. The Respondent did not dispute that there had been a failure on his part to adhere to the Regulations and he accepted that he was in breach.

On that basis, the Tribunal was satisfied that there was a breach of the Regulations. The question for the Tribunal was to determine the level of penalty to be imposed on the Respondent. In terms of the Regulations, the Tribunal could impose a maximum penalty equivalent to three months rent due under the tenancy.

The Respondent indicated that there were a couple of factors that had led to the Regulations being breached. Firstly, the tenancy had started more quickly than the Respondent would have preferred. He had been on holiday the week prior and had forgotten the deposit in the rush. Secondly, he provided evidence of a medical condition he was suffering from currently (and intimated had been current at the start of the tenancy as well) that had led him to pay less attention to the deposit than he ought to have done. He had submitted this was a one-off lapse and that he was otherwise a good and compliant landlord

The Tribunal was conscious of the case of *Jenson v Fappiano*, which indicated that in reaching a decision the Tribunal should weigh the whole circumstances before it, both good and bad, on the part of the Respondent, in reaching a decision as to the level of penalty to be imposed.

The Tribunal was conscious that the Respondent owned 3 properties and was well aware of the legal requirements to put the deposit in to an approved scheme. The Respondent had failed to put the deposit in to an approved scheme even after the initial rush of granting the tenancy was over. The tenancy had been unprotected for the full length of the tenancy and remained so at the date of the hearing. One of the primary purposes of the Regulations is to ensure that a tenant, at the end of a tenancy, is in a position of equal strength as the landlord to get the deposit back. In this case, the Respondent had determined himself that he was entitled to the deposit. The Respondent had ignored the Applicant's view that they were entitled to some or all of the deposit back. The Respondent had effectively acted as judge and jury on the question of the deposit. This was precisely the situation the Regulations were brought in to prevent. In the normal course of events, the Tribunal would have been readily persuaded to impose the full penalty of 3x the monthly rent.

However, the Tribunal took note of the mitigating circumstances put forward by the Respondent. The Tribunal noted the evidence from other tenants who confirmed the Respondent was of good character and had complied with the law. The Tribunal noted the medical condition of the Respondent which may have contributed to his oversight. The Tribunal noted that whilst the Respondent still retained the deposit, he had been open and frank with the Tribunal and had admitted the breach and apologised for it. On that basis, the Tribunal took the view that the penalty should be reduced somewhat to an amount equivalent to two months rental

Under Regulation 10 of the Regulations the Tribunal has the power to order a landlord to place the tenancy deposit in to an approved scheme. Given it was apparent at the CMD that the parties were still in dispute about whether or not the deposit should be returned or not, the Tribunal deemed it appropriate to order the Respondent to place the deposit of £815 in to an approved scheme. This would put the parties back in the position they ought to have been had the Regulations been

adhered to and they could each apply for the amount they thought fit. If they did not agree then the independent adjudication scheme within the approved scheme could be utilise and a determination reached.

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.

Ewan Miller

Legal Member/Chair

25/11/19

Date