

Housing and Property Chamber
First-tier Tribunal for Scotland



**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/19/1706

Re: Property at 17 Ferguson Drive, Denny, FK6 5AE ("the Property")

Parties:

Mr Patryk Swientulski, 9 Ferguson Drive, Denny, FK6 5AE ("the Applicant")

**Mr Daniel Szymczykowski, Ms Izabela Szymczykowska, 17 Ferguson Drive,
Denny, FK6 5AE ("the Respondent")**

Tribunal Members:

Fiona Watson (Legal Member)

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 of the undernoted sum to the Applicant(s):

Sum of NINE HUNDRED AND FIFTY POUNDS (£950) 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 23 September 2019. The Applicants were personally present. The First-Named Respondent was personally present and representing both Respondents.
3. The Applicants sought an order from the Tribunal on the basis that the Respondent had failed to comply with their 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 Applicants submitted that they had entered into a tenancy with the Respondents which commenced 1 October 2016. A copy of the tenancy agreement was lodged with the application. The Applicants paid a £475 deposit to the Respondents prior to the start of the tenancy. The Applicants raised the issue of the deposit not having been secured in a tenancy deposit scheme with the Respondents by text message but received no response. The Respondents relocated to Panama shortly prior to the start of the tenancy. The Respondents gave the Applicants notice to move out of the Property on 17 January 2019, as they were returning home from Panama. The deposit was thereafter protected with Safe Deposits Scotland on 22 January 2019. The Respondents had applied to the scheme for the deposit to be returned to them due to alleged disrepair in the property. The Applicants disputed said claim and the scheme found in the Applicants' favour. The deposit was returned in full to the Applicants by the scheme.
5. The First-Named Respondent admitted that the deposit had been lodged late. She advised the Tribunal that she and the Second-Named Respondent were relocating to Panama for work and it had been a stressful time. The Second-Named Respondent had been very unwell at that time. They simply wanted someone to look after their house for them whilst they were away. She had attempted to lodge the deposit with Safe Deposits Scotland online on 19 September 2016 when she started her new job. She hadn't received any confirmation from the scheme that the deposit had been submitted. She did not chase this up, nor contact the scheme for clarification. She submitted that the Applicants had not contacted her about it and suggested that they should have done so if they wished to ascertain that the deposit was securely held. This would have alerted her to the deposit not having been protected. No evidence to suggest an attempt had been made to lodge the deposit on 19 September 2016 had been lodged by the Respondents. This was the first time they had rented out the property and were unaware of their obligations as landlords. They were unaware of the penalties associated with failing to lodge a deposit in a scheme timeously.

- Findings in Fact

6. The Tribunal made the following findings in fact:

- (a) The parties entered into a short assured tenancy which commenced 1 October 2016;
- (b) The Applicants paid a deposit of £475 to the Respondents;
- (c) The Respondents failed to lodge the deposit of £475 into an approved tenancy deposit scheme until 22 January 2019;
- (d) The Respondents failed to provide the statutory information to the Applicants under Regulation 42 of the Regulations;
- (e) The Tenancy ended on 3 March 2019;
- (f) The Deposit had been returned to the Applicants in full via the deposit scheme provider following the termination of tenancy.

- Findings in Law

7. The Tribunal made the following findings in law:

7.1 The Respondents were in breach of their 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 Respondents were in breach of their duties under Regulation 42 of the 2011 Regulations, which states as follows:

42.—(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).

(2) The information is—

(a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;

(b) the date on which the tenancy deposit was paid to the scheme administrator;

(c) the address of the property to which the tenancy deposit relates;

(d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;

(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and

(f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.

(3) The information in paragraph (2) must be provided—

(a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or

(b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.

7.3 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 Respondents were in breach of Regulations 3 and 42 as aforesaid. This was by the Respondents own admission. The Tribunal was not satisfied that the circumstances surrounding the Respondents 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 their failure to lodge the deposit into an approved tenancy deposit scheme within 30 working days of the commencement of the tenancy, the deposit was not protected for a period in excess of two years. The Tribunal acknowledged that the deposit was eventually protected on 22 January 2019 and which gave the parties access to the scheme's arbitration system to determine whether or not any deductions should be validly made. The scheme repaid the deposit in full to the Applicants following a claim being made by the Respondents for same to be repaid to them.
11. The Tribunal noted that the Respondents were aware of their 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 Applicants in full.
12. The Tribunal did not consider it relevant that the Respondents submitted that the Applicants had not chased them for information on the deposit being secured. This is not an obligation of the tenant to do so. It is the Landlords' obligation to ensure that they abide by their obligations under the Regulations. The Tribunal also does not consider it satisfactory for the Respondents to suggest that they were not aware of the Regulations and their obligations thereunder. The Respondents entered into a tenancy agreement with the Applicants which specifically referred to the Regulations. They had a duty to ensure that they understood their obligations under same. They submitted that they had attempted to secure the deposit on 19 September 2016, albeit

unsuccessfully, therefore had some knowledge of the position. They had a duty to follow this up and ensure they had complied with their obligations, but failed to do so.

- 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:

NINE HUNDRED AND FIFTY POUNDS (£950) 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.

F Watson

Legal Member/Chair

20/9/19

Date