

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/18/2159

Re: Property at Whitelea, Main Road, St Cyrus, DD10 0BA (“the Property”)

Parties:

**Ms Pauline Paterson, 28A High Street, Laurencekirk, AB30 1AB
 (“the Applicant”)**

**Mrs Pamela MacPherson, Rosebank Cottage, Drum, Kinross, KY13 0UN (“the
 Respondent”)**

Tribunal Members:

**Petra Hennig-McFatridge (Legal Member) and Linda Robertson (Ordinary
 Member)**

Decision in absence of the Respondent

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
 Tribunal”) determined that an order for payment by the Respondent to the
 Applicant of £1,800 in terms of Regulation 10 (a) (i) and in terms of Regulation
 10 (a) (ii) for immediate provision by the Respondent to the Applicant of the
 information to be provided under Regulation 42 (2) (f) of the Tenancy Deposit
 Schemes (Scotland) Regulations 2011 namely “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” should be made.**

BACKGROUND:

**The Applicant Ms Paterson made an application under Rule 103 of the Rules of
 Procedure on 16 August 2018.**

**The Applicant submitted to the Tribunal a lease agreement signed on 11 July 2018
 which also contained the reference to a deposit of £1000 to be paid and an AT5
 document. The Respondent lodged a letter to the Tribunal dated 27 September 2018
 acknowledging that a deposit of £1000 had been received from the Applicant and
 stating that the Respondent had forgotten to place this into a deposit scheme due to
 moving house. She stated the deposit was noted on the lease agreement and signed**

by both parties. The letter included a calculation arriving at the sum of £200 as an appropriate compensation to the Applicant for the oversight.

A Case Management Discussion (CMD) took place on 9 October 2018 and the note with request for further information from both parties is referred to for its terms and held to be incorporated herein.

Both parties submitted further documentary evidence. The Respondent's legal representative provided further evidence by email of 19 October 2018 enclosing the Tenancy Deposit Scheme receipt of the deposit having been received for the property on 15 August 2018, and confirmation of the landlord registration for the property having been approved on 23 August 2018. The Applicant provided further documentary evidence 18 October 2018 enclosing a copy of a further lease agreement dated 19 February 2016 and signed by both parties and containing the comment "paid" next to the deposit sum of £1000, a letter from Mike Smith Slater and Building Contractor dated 7 October 2013, copies of a text exchange between the Applicant and the Respondent making reference to the deposit on 13 September 2013, a document headed "Proof that Pam MacPherson is G+P Flats with screenshots from internet sites, document headed "Properties owned by Pamela Macpherson" including a narrative of incidents and circumstances of the tenancy, screenshot of a landlord registration for a property in Angus in the name of the Respondent. The documents are referred to for their terms and held to be incorporated herein.

The hearing:

Present at the hearing were the Applicant Ms Paterson and the legal representative of the Respondent, Mr Muir.

The Applicant gave evidence that she had rented the property from 19 August 2013 until 10 December 2018 and had moved out last Monday. She had paid the deposit prior to the start of the tenancy and the landlord had referred to the deposit in text messages on 13 September 2013 and thus in her view it is not correct that the Respondent had simply forgotten about the deposit because she had mentioned it on 13 September 2013 after the Applicant had already moved in. She further pointed out that in January 2016 in relation to electrical works being carried out in the property the electrician had asked the Respondent for her landlord registration details so he could issue an EICR certificate and this had never been forthcoming. At that stage the Respondent would have known she had not registered as a landlord and thus not provided that information to the Applicant. She further referred to the documents lodged and stated that the Respondent was an experienced landlord because she had been involved for years in companies dealing with rental properties and would have known what she was required to do with regard to landlord registration and the deposit and still had not done anything about it until this was raised in August 2018 by the Applicant. Mr Muir asked the Applicant whether she was of the view that this was done out of malice or whether she thought that the Respondent had tried to defraud her of the deposit. The Applicant stated that she had provided the deposit, it had been fraudulently unprotected until August 2018 and she thought the landlord at the time had kept it although she knew all the steps to be

taken. She also pointed out that the deposit had not been returned at this stage and she did not know what would happen now that she had moved out.

The Respondents position at the hearing narrated by Mr Muir. He stated that the Respondent had admitted the breach of the Regulations as soon as this had come to light and had acted immediately by completing the landlord registration and dealing with the deposit by putting it into an approved scheme. The Respondent had offered compensation in the sum of £200 which was rejected by the Applicant. The Respondent's position is that she had simply forgotten about the deposit because she was moving out of the family home into another property at the time and the family home was the property the Applicant was moving into. Moving was a time causing upheaval. She was only involved in other businesses dealing with letting but there were agents involved who largely dealt with the work. Mr Muir was unable to comment on the question as to why the Respondent had not dealt with landlord registration when this was brought to her attention in 2016 by the interaction with the electrician. He further stated that his client had no intention to break the law or hold on to the deposit and had no need to defraud the Applicant. The deposit had been receipted on the lease. People can just forget. At the time the Regulation had only been in force for about 18 months and there are a lot of changes in legislation relating to letting property. Whilst she admitted she failed in this regard she had offered compensation and had remedied the breach. It was an oversight. This property was not part of the properties being dealt with by the businesses she was involved with G+P Flats and G+P Properties but was her former family home. The Respondent had been genuinely distressed by this process and had apologised.

The legal test:

In terms of Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 an application under that Regulation must be made within 3 months of the end of the tenancy. In terms of Regulation 10 "if satisfied that the landlord did not comply with any duty in Regulation 3 the First tier Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and (b) may.... order the landlord to (ii) provide the tenant with the information required under regulation 42."

In terms of Regulation 3 "(1) A landlord who had received a tenancy deposit in connection with a relevant tenancy must, within 30 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."

In terms of Regulation 42 (2) the information includes " (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...(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 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 of set out in that regulation"

Findings in fact:

1. The Applicant paid a deposit of £1000 to the landlord on 11 July 2013.
2. The tenancy started on 19 August 2013.
3. The Applicant moved out of the property on 10 December 2018.
4. The deposit was lodged with SafeDeposits Deposit Scotland under DAN424142 on 15 August 2018.
5. The date the deposit should have been lodged at the latest, given the date of the commencement of the tenancy was 30 September 2013.
6. The Respondent registered as landlord for the property in the register of Aberdeenshire Council under landlord registration number 917102/110/23081 on 23 August 2018.
7. The Respondent notified the Applicants indirectly of the deposit having been lodged with a registered scheme and the landlord registration when the relevant documents were sent to the Tribunal by the legal representative on 19 October 2018 and thereafter intimated to the Applicant by the Tribunal.
8. The Respondent did not notify the Applicant separately once the registration details and the deposit details became available in August 2018.
9. The Respondent is involved in the letting of other properties either in her own right or as part of businesses engaged in letting properties to which she is a director and has been involved in such businesses for some years. Her LinkedIn profile refers to being a "Property company owner" since 1999 and she has been a Director of G+P Flats since 2008.
10. On 13 September 2013 the Respondent wrote a text message to the Applicant referring to the possible return of the deposit paid by the Applicant.
11. In January 2016 the matter of landlord registration was raised with the Respondent by an electrician in connection with the issuing of a EICR certificate for the property.
12. A further lease had been signed by the Applicant on 19 February 2016 and by the Respondent on 18 February 2016 when the deposit was acknowledged as "paid".

Reasons for Decision:

The tribunal considers that the landlord did not comply with the requirements of Regulations 3 and 42 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 in two respects. This is not disputed.

The deposit was not paid over to a registered scheme within 30 working days of the commencement of the tenancy agreement. The deposit had remained unprotected for 5 years from August 2013 until August 2018.

The Respondent had not provided any information about the deposit being lodged and the status of her landlord registration to the Applicant for 5 years and even after the application was made in August 2018 had not provided this information to the Applicant until the information was finally intimated to the Applicant by the Tribunal once the legal representative for the Respondent had lodged it in evidence on 19 October 2018.

Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 is a regulatory sanction to punish the landlord for non-compliance with the rules. There have been various approaches in calculating the appropriate sanction in terms of the Regulations. The preferred approach appears to be that adopted in *Jenson v Fappiano*, 2015 GWD 04-89 should be "fair, proportionate and just, having regard to the seriousness of the con-compliance".

The Tribunal has discretion to award up to three times the amount of the deposit, in this case the upper limit would be £3,000.

Ultimately the Regulations were put in place to ensure compliance with the Scheme and the benefits of dispute resolution in cases of disputed deposit cases, which the Schemes provide.

The Tribunal took into account:

1. the length of time the deposit was unprotected, namely almost the entire duration of the tenancy and a significant period of time of 5 years,
2. the fact that the landlord and Respondent was not an "accidental" with the property being the only and first property the landlord was involved in letting but had clearly been involved directly or indirectly in letting properties and in that regard would have had access to the information about landlord duties,
3. that the Respondent had not taken action in 2016 when she clearly had reason to consider the duties of lodging the deposit when the replacement lease was signed by her and the deposit payment again acknowledge by her and when the electrician had raised the issue of the landlord registration,
4. that she had provided no reason why she did not comply with the duties under Regulations 3 and 42 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 in 2016
5. that she he had not paid the deposit into an approved Scheme in time and had also neglected the duty to complete the landlord registration and advise the tenant of his registration number until October 2018 and thus breached two essential duties under as landlord
6. that the landlord registration and lodging of the deposit had been completed only after she had been prompted to do so by the Applicant, which means that potentially without the Applicant taking action the Respondent would in all likelihood not have lodged the deposit or completed the registration for a further period.
7. that the duty to lodge the deposit with an approved scheme initially arose at a time when the Respondent moved house.
8. that once she had been prompted to complete the registration and lodge the deposit she had done so in August 2018.
9. that the deposit was now protected.

Taking all these matters into account the Tribunal considered that in all the circumstances the amount should not be at the maximum level of 3 times the deposit but that the breaches were of a severity and nature justifying an amount of £1,800. The tribunal also considers that the Respondent had still not fully complied with the duties in terms of Regulation 42 (2) (f), which is particularly important given that the tenancy had recently come to an end and thus the information regarding the return of the deposit will be of particular importance to the Applicant at this time.

Decision:

The First-tier Tribunal for Scotland (Housing and Property Chamber) grants an order for payment by the Respondent to the Applicant of £1,800 in terms of Regulation 10 (a) (i) and in terms of Regulation 10 (a) (ii) for immediate provision by the Respondent to the Applicant of the information to be provided under Regulation 42 (2) (f) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 namely "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"

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.

P Hennig - McFatrige

Legal Member/Chair

Date

14 December 18