

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) Regulations 9 and 10 of the Tenancy Deposit
Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/19/0759

Re: Property at 11 Gowrie Street, Dundee, DD2 1ES (“the Property”)

Parties:

Mr Gary Jamieson, 1 Cloan Grove, Dundee, DD3 9DT (“the Applicant”)

**Mr Saydulla Persheyev, 22 Marchfield Road, Dundee, DD2 1UG (“the
Respondent”)**

Tribunal Members:

**Maurice O'Carroll (Legal Member)
Elizabeth Dickson (Ordinary Member)**

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that no Order under the 2011 Regulations should be
made.**

Background

1. A Case Management Discussion (“CMD”) had previously been held at 2pm on 18 June 2019 at Caledonian House, Greenmarket, Dundee. The application under the 2011 Deposit Regulations had been conjoined with application CV/19/1096 in respect of the civil recovery application. The notes arising from both of those CMDs are adopted here. Due to the issues involved in the present application, the CMD was adjourned to a full hearing.
2. A full hearing on the merits was heard at 2pm on 16 July 2019 at Caledonian House, Greenmarket, Dundee. The Applicant former tenant appeared on his own behalf. The Respondent former landlord appeared in person, accompanied by his representative Mrs Tania Royle of Messrs Baillie Shepherd, solicitors.
3. The Tribunal granted the Respondent’s application for an Order for Payment in under the civil payment proceedings. It then considered the Applicant’s application for payment of a penalty in terms of the 2011 Regulations.

Findings in fact

4. The Applicant and his former joint tenant entered into a short assured tenancy with the Respondent landlord on or about 30 September 2016 (“the original tenancy”).
5. The rent payable under the original tenancy was £750 per calendar month. The deposit payable was one month’s rent. The Respondent and his former joint tenant paid the deposit at the start of the original tenancy.
6. At some point prior to 1 August 2018, the Respondent’s joint tenant moved out of the Property, leaving him as sole tenant. At around the same time, the Applicant missed a single rent payment, meaning that he was £750 in arrears. The Respondent reluctantly permitted him to use his deposit to pay the shortfall in rent. This was done with the express agreement of both parties. The net result was that all of the deposit paid under the original tenancy was used up to pay for the rent arrears that had occurred.
7. Following these developments, a new tenancy agreement was drawn up between the parties. The new tenancy listed the Applicant as the sole tenant. The start date stated in the new agreement was 1 August 2018. The deposit from the original tenancy was not carried over to the new tenancy because there was none remaining, having been used to satisfy the previous rent arrears.
8. The Respondent sought payment of a deposit in respect of the new tenancy, but none was ever paid by the Applicant.
9. As no deposit under the new tenancy was ever paid by the Applicant, there was none to be deposited in a deposit scheme in terms of the 2011 Regulations.

Tribunal decision

10. In light of the above findings in fact, the Tribunal concludes that a brand new tenancy had been entered into between the parties on 1 August 2018. An essential term, the parties thereto, had changed since the Applicant was now a sole tenant. Moreover the statutory basis of it had changed. Whereas it had previously been a Short Assured Tenancy, it was impossible for this to have been continued on that basis after the abolition of such tenancies on 1 December 2017.
11. It follows from the above that there was a new obligation on the Applicant to provide a deposit. Had he done so, the obligations on the Respondent would have followed as a matter of law. However, he did not do so, with the result that there was no deposit to protect in terms of the 2011 Regulations.

12. Since there was no deposit to protect, there cannot be a failure to place any deposit within a protected scheme. Therefore the Tribunal may not make an Order in respect of such failure in terms of Regulation 10 of the 2011 Regulations.

13. The Tribunal therefore dismisses the application and makes no Order.

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.

Maurice O'Carroll

Legal Member/Chair

_____ 16 July 2019
Date