

**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/22/3067**

**Re: Property at 61 Alison Street, Kirkcaldy, Fife, KY1 1TT (“the Property”)**

**Parties:**

**Ms Sharon Nicolson, 61 Alison Street, Kirkcaldy, Fife, KY1 1TT (“the Applicant”)**

**Mrs Lucy Fraser, 19 Craigearn Place, Kirkcaldy, Fife, KY2 6YT (“the  
Respondent”)**

**Tribunal Members:**

**Fiona Watson (Legal Member) and Ann Moore (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the application is dismissed.**

- 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 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 Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).
- 2. A Case Management Discussion (“CMD”) took place on 23 November 2022 by conference call. The Applicant was not present on the call but was represented by Mrs Walker of Frontline Fife. The Respondent was personally present and joined by her husband, Peter Fraser.

3. The Applicant's representative 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. It was submitted that the Applicant was seeking compensation for the Respondent's failure to lodge her tenancy deposit into an approved tenancy deposit scheme. The tenancy agreement was ongoing and she sought that the deposit also now be placed into a scheme. It was submitted that the Applicant had paid a sum of £700 into a bank account held with Nationwide, as nominated by the Respondent, and which was for rent (£350) and deposit (£350). It was thought that said bank account was held in a Chinese name. This payment was made on or around April 2009. This account was used for payment of rent for the first few months of the tenancy and thereafter another bank account was used. Whilst the application had set out that the Applicant had paid the deposit in three instalments, it was submitted that this was an error and the Applicant now recalls that she paid it in one sum. The Applicant has no documentary evidence of the payment being made, and wishes to proceed to a hearing on the basis of her oral evidence.
4. The Respondent submitted that no deposit was ever paid by the Applicant. A letter had been lodged by the Respondent from Nationwide and which confirmed that the bank account currently used for payment of rent was opened after the start of the tenancy. This could not have been used for payment of the deposit in April 2019. Mrs Fraser submitted that she has never held any other accounts with Nationwide. The Applicant had moved into the Property on 20 March 2009 and with no written tenancy agreement. Thereafter she sought a written agreement in order that she could claim housing benefit. The tenancy agreement issued was supplied by the Applicant herself. It was agreed that the tenancy agreement stated that a deposit of £350 was due under the Agreement. It was submitted that this was not paid by the Applicant at the start of the tenancy as the Applicant had said that she could not afford to, and that there had been agreement that this could be paid at a later date but that this did not happen. It was submitted that whilst the Property is owned by Mr Fraser, the tenancy agreement was entered into in the name of Mrs Fraser as Mr Fraser was working abroad.
5. The CMD was adjourned and a Hearing fixed to determine whether or not a tenancy deposit was paid by the Applicant to the Respondent. A Hearing was scheduled for 27 February 2023 to take place by video call (Webex) for evidence to be heard. The hearing on 27 February 2023 could not proceed due to the parties being unable to access Webex. Whilst the Respondent appeared on the screen and was able to hear and be heard, neither the Applicant nor her representative could be seen or heard. Accordingly, the Hearing was adjourned to another date to be fixed hereinafter, and to take place in person.

- The Hearing
6. A Hearing took place on 22 May 2023, in person. The Applicant was personally present and represented by Ms Morison of Frontline Fife. The Respondent was personally present and represented herself.
- The Applicant's Evidence
7. The Applicant stated that she paid a deposit of £350 at the start of the tenancy, which commenced 30 March 2009. The Applicant stated that she paid a total of £700, comprising £350 for the deposit and £350 for the first month's rent, which sum was paid into a bank account nominated by the Respondent and held with Nationwide. The Applicant stated that prior to Frontline Fife becoming involved, the Respondent did not raise the issue of non-payment of the deposit with her and the Applicant did not know that it should have been placed within a tenancy deposit scheme. The Applicant stated that a mutual acquaintance, David Gilroy, had attended the Property to fix the washing machine and during a conversation with him, Mr Gilroy had stated that she could have paid the first three months' rent up front to avoid a requirement to pay a deposit. The Applicant stated that she had been unable to do so and instead had paid £700 up front into the Respondent's bank account. The Applicant stated that she had received £350 from her father and £350 from housing benefit to meet this sum.
  8. The Applicant stated that the Respondent gave her a piece of paper which contained the hand-written details of her bank account. The Applicant stated that she took the £700 out of the cash machine and walked with it to the Nationwide branch in High Street, Kirkcaldy and paid it into the said bank account. The Applicant stated that a few months later the Respondent gave her different bank account details for ongoing payment of rent.
  9. The Applicant stated that she did not have a receipt for the payment of the £700 at the start of the tenancy, given the passage of time. The Applicant stated that her bank was unable to provide her with copy bank statements prior to 2017. Therefore she could not produce any evidence of the payment being made.
- The Respondent's Evidence
10. The Respondent stated that at the end of February or start of March 2009, David Gilroy spoke to her husband, Peter Fraser, advising that his friend's daughter had a problem and needed accommodation and he had been asked if she could move into their empty flat. The Respondent initially said she did not want to offer the flat to the Applicant but that David Gilroy and her husband persuaded her to do so. The Respondent stated that the Applicant attended the Property to view it along with her father, Gordon, in the middle of March 2009. The Respondent stated that David Gilroy had known the Applicant's father, Gordon, for a long time and as the Respondent trusted David Gilroy's judgement she agreed to let the property to the Applicant.

11. The Respondent stated that the Applicant's father had advised that the Applicant had a money problem and she would need to apply for housing benefit to pay the rent. The Applicant's father had stated that she would need to obtain the tenancy first and then could apply for housing benefit thereafter. The Respondent stated that her husband trusted David Gilroy and so on that basis they agreed, and the Applicant moved into the property on 30 March 2009. No tenancy agreement was signed at the outset.
12. The Respondent stated that the tenancy agreement was signed by the parties on the 20 April 2009. The Respondent stated that she had received a call from David Gilroy who advised that the Applicant's father had downloaded a tenancy agreement online and needed the Respondent to sign it in order that the Applicant could then apply for housing benefit with Fife Council. The Respondent stated that she went along and signed the tenancy agreement that day. She did not fill out any of the information on the agreement, as this had all been pre-populated by the Applicant's father. She simply signed it. She did not read it nor did she take any advice, which she now regrets.
13. The Respondent stated that her bank account with the Nationwide had not been opened until 2010 and therefore the Applicant could not have paid money into her Nationwide bank account at the start of the tenancy. The Respondent stated that the Applicant should have kept a receipt from the bank if she had indeed paid £700 into an account. The Respondent stated that if such a sum had been paid, it was not paid into an account held by her.
14. The Respondent stated that the Applicant often paid her rent on different dates and it was difficult to keep track. The Respondent opened up the account with the Nationwide solely for the purpose of receiving the rent from the Applicant in order that she could keep better track of the rent payments.
15. The Respondent showed the Tribunal members, on her mobile phone banking app, the statements from the bank account that she had held in 2009 and into which she received a first payment from the Applicant in July 2009. The Respondent showed the bank statements for March, April, May, June and July 2009 to the Tribunal and which showed that no sum of £700 had been deposited into said bank account.
16. The Respondent stated that the first payment made by the Applicant was in July 2009 in the sum of £350 for rent. No payments were made prior to then.
17. The Respondent stated that she did not give the Applicant a tenancy agreement when she moved into the Property because she did not think she would have been staying for very long, as the Applicant had indicated that she had applied for a council house. The Respondent thought this would be a short-term arrangement. The Respondent stated this was the first tenancy she had entered into. There had been no tenants in the Property prior to the Applicant. She registered as a landlord with the local authority specifically for this particular tenancy agreement. The Respondent stated that she went to the Fife Council office with the Applicant the day before the Applicant moved into the property,

as the housing officer wanted to speak with her and ensure that the lease was going ahead. It was then that she was told she would require to register with the local authority as a landlord, and she did so.

18. The Respondent referred to the application form in which it was stated that the Applicant had paid the deposit to the Respondent in three instalments. The Respondent noted that this contradicted the Applicant's current position that she had paid it in one payment directly into her bank account.
19. When asked under cross examination whether she considered that she should have taken more responsibility as a landlord from the outset, the Respondent confirmed that yes, she should have, but that she had not treated this arrangement as a "proper rental". The Respondent stated that the Applicant had been presented to her as effectively homeless at the time and was told that matters were urgent for her. The Respondent stated that she was simply trying to help, having been urged to do so by her husband and David Gilroy.
20. The Respondent stated that when she was first contacted by Frontline Fife, it was an advice worker called Victoria who spoke to her and indicated that the Applicant only owed her one month's rent. The Respondent stated that she had corrected Victoria on this and advised her that the Applicant owed more than that and also had not paid her deposit. The Respondent stated that she had chased the Applicant on numerous occasions for payment of rent, which were unsuccessful.

- Findings in Fact

21. The Tribunal made the following findings in fact:

- (i) The parties entered into a tenancy agreement which commenced 30 March 2009;
- (ii) A tenancy agreement was signed between the parties on 20 April 2009;
- (iii) No tenancy deposit was paid by the Applicant to the Respondent.

- Reasons for Decision

22. The Tribunal did not find the Applicant's evidence credible or reliable. The Applicant produced no evidence to support her position that she had paid the sum of £700 to the Respondent in respect of a deposit and rent at the start of the tenancy. The Applicant did not produce any receipt for such a payment nor copy bank statement, albeit it was noted by the Tribunal that there had been a significant passage of time since then.
23. It was noted by the Tribunal that the Applicant's position as regards the initial payment and the source of those funds became somewhat muddled during the course of the hearing. It was noted that the application form itself stated that the Applicant had made payment of the deposit in three instalments. At the CMD, the Applicant changed her position and indicated that this was incorrect and that she had in fact paid it in one instalment. At the start of the hearing the

Applicant stated that she paid £700, £350 of which came from her father and the other £350 which came from housing benefit. When asked by the Tribunal how she could have obtained £350 from housing benefit at the start of the tenancy, when there would have been a delay between the start of the tenancy and housing benefit coming into payment following her applying for same, the Applicant was unable to answer this. The Applicant appeared to become somewhat muddled as to where the money had come from and was unable to confirm the length of time it took between her moving into the Property and housing benefit commencing payment. It was noted by the tribunal that housing benefit once awarded would meet the cost of ongoing rent, but would not meet the cost of any tenancy deposit required under a tenancy agreement.

24. Whilst the Tribunal considered that at times the Respondent was somewhat evasive in answering questions put to her, particularly in relation to her bank accounts, the Tribunal did prefer the evidence of the Respondent where it contradicted that of the Applicant. The Respondent had produced a letter from the Nationwide which confirmed that the first account that she had opened with them was opened in 2010. On that basis the Tribunal was satisfied that the Respondent did not hold a bank account with the Nationwide at the commencement of the tenancy and therefore could not have received payment of a deposit into a Nationwide bank account at the start of the tenancy, as was claimed by the Applicant.
25. The Tribunal also noted that the Respondent had produced to the Tribunal bank statements from her bank account in 2009. Having examined the bank statements from March, April, May, June and July 2009 there was no payment evident of £700 from the Applicant (or from any other source). It was noted by the Tribunal that the first apparent payment from the Applicant was in July 2009, albeit the bank statement did not specify in the description of that payment that it had come from the Applicant, and it simply had a reference of "transfer". The Respondent's position was that this was the payment received from the Applicant in respect of rent, and had been the first payment made by the Applicant since she had moved into the property.
26. The Tribunal considered the terms of Regulation 3 of the 2011 Regulations which is set out below:

*Duties in relation to tenancy deposits*

*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.*

27. In order to grant an order as sought by the Applicant, the Tribunal required to be satisfied, on the balance of probabilities, that a deposit was received by the Respondent and that she had thereafter failed to comply with her duties to lodge same in a tenancy deposit scheme, in terms of Regulation 3 of the said 2011 Regulations. The Tribunal was not satisfied on the evidence before it that such a deposit had been received by the Respondent. The burden of proof rests with the Applicant to satisfy the Tribunal of the basis of their application. The Tribunal was not satisfied that there was sufficient evidence before it to make a determination that a tenancy deposit had been received by the Respondent.

- Decision

24. The Tribunal accordingly dismissed the application.

## **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.**