



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulations 3 and 10 of the Tenancy
Deposit (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/23/0291

Re: Property at 1/L 159 Clepington Road, Dundee, DD3 7SN (“the Property”)

Parties:

Mr Rafal Tarnacki, Flat G, 10 Cardross Street, Dundee, DD4 9AA (“the Applicant”)

Mr Marc Van Der Kuyl, 24 Hyndford Place, Dundee, DD2 1HS (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of one times the deposit, £465, should be made.

Background

The Applicant lodged an application on 27th January 2023 under Rule 103 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) seeking a sum under the Tenancy Deposit (Scotland) Regulations 2011.

Lodged with the application were:

1. Copy Tenancy Agreement with a commencement date of 1st September 2022` and a deposit of £465
2. Email from Respondent to Applicant dated 4th October 2022 giving notice for 1st November 2022
3. Correspondence between parties
4. Bank Statements

The papers were served on the Respondent by Sheriff Officers on 6th March 2023.

On 9th March 2023 the Respondent sent a written submission by email.

Case Management Discussion

The Case Management Discussion ("CMD") took place by teleconference on 5th April 2023. Both parties dialled in and represented themselves..

The Chairperson explained the purpose of a CMD in terms of Rule 17.

The Chairperson confirmed with both parties that they agreed the following facts:

- a. The parties entered in to a tenancy agreement for the property commencing on 1st September 2022;
- b. The Applicant paid a deposit of £465;
- c. The Respondent did not pay the deposit in to an approved scheme;
- d. The Applicant sent an email to the Respondent on 4th October 2022 giving 28 days' notice;
- e. The Applicant vacated the property on 1st November 2022;
- f. The respondent returned the deposit to the Applicant.

The Chairperson stated that as the Respondent accepted he did not pay the deposit in to an approved scheme it was now for the tribunal to decide what the penalty should be.

The Applicant said that the respondent had failed to lodge the deposit in an approved scheme, and he had only paid the deposit back to the applicant when the applicant had said he would raise Tribunal proceedings. He said that there had been issues in that the Respondent had said he would do some work to the property before the Applicant moved in but that he had not. The Applicant did not feel that he could trust the Respondent and gave notice. He asked the respondent for compensation of one times the deposit to cover moving expenses. He said that he transferred the deposit to the Respondent on 29th July 2022, so he had had plenty of time to transfer it to a scheme. The deposit was only returned after he asked for it.

The Respondent said that his aunt had died around the time of the tenancy beginning. He had been very close to her and she was like a mother to him. He said that he runs a successful business with employees and it had been a bit of a nightmare around that time due to the bereavement.

The Chairperson asked about other rental properties. The Respondent confirmed that he had 3 rental properties. They were all rented out, he had taken deposits for each

of them and the deposits were lodged in schemes. He was aware of his responsibilities in terms of deposits. He said that he was a nice guy and all his flats were to a high standard.

Findings In Fact

1. The parties entered in to a tenancy agreement for the property commencing on 1st September 2022;
2. The Applicant paid a deposit of £465;
3. The Respondent did not pay the deposit in to an approved scheme;
4. The Applicant sent an email to the Respondent on 4th October 2022 giving 28 days' notice;
5. The Applicant vacated the property on 1st November 2022;
6. The Respondent returned the deposit to the Applicant.

Reasons For Decision

The Application has been brought under the Tenancy Deposit (Scotland) Regulations 2011, based on an alleged failure of the Respondents of their duties under Regulation 3, and seeking a payment in terms of Regulation 10.

Regulation 3 is 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.

Regulation 10 is as follows:

10. If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal—

(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 First-tier Tribunal 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.

The respondent accepted that he had not lodged the deposit in a scheme in terms of Regulation 3.

Regulation 10 gives the Tribunal power to impose a sanction of up to three times the amount of the deposit. The amount is at the discretion of the Tribunal. The Tribunal must consider the seriousness and the nature of the breach.

The tenancy ran for a period of around two months. Regulation 3 says that the deposit must be deposited within 30 working days of the start of the tenancy. The expiry of 30 working days would have been 12th October 2022. The Applicant's money was unprotected from 12th October 2022 to 1st November 2022. Depositing the money in a scheme protects a tenant from several factors, including the landlord becoming bankrupt. The deposit is the tenant's money and remains the tenant's money until an adjudication is carried out by the Tenancy Deposit Scheme and a decision is made as to whether the landlord is allowed to retain any or all of the deposit. It is not for a landlord to make this decision unilaterally; it is not the landlord's money.

The Respondent here has three rental properties, and he is aware of his responsibility to lodge the deposit in a scheme. His position is that it was an oversight due to a bereavement. It is noted that he was slow to return the deposit

after the end of the tenancy. If the Respondent is to continue to rent out properties he will need to tighten up his procedures to comply with the law.

The Tribunal did not think that the breach was serious enough to be at the top end of the scale. The Tribunal balanced the fact that the respondent has other properties and knows his responsibilities against his bereavement and the short time that the deposit was unprotected and decided that a penalty of one time the deposit was appropriate.

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.

**Alison Kelly
Legal Member/Chair**

**6 April 2023
Date**