



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

Chamber Ref: FTS/HPC/PR/22/2121

**Re: Property at 74 Rowett South Drive, Bucksburn, Aberdeen, AB21 9GH (“the
Property”)**

Parties:

**Miss Fiona O'Dowd, Mr Hector Thomson, Rose Lodge Cottage, Drumoak,
Banchory, AB31 5AB (“the Applicant”)**

**Touchstone Corporate Property Services Limited, 1 Hay Avenue, Edinburgh,
EH16 4RW (“the Respondent”)**

Tribunal Members:

Jan Todd (Legal 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 should be granted in favour of
the Applicants in the sum of £1,185.**

Background

- 1) The Applicants lodged an application dated 28th June 2022 under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”), applying for an order in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”).
- 2) The Applicants stated that they did not have a copy of the tenancy agreement but lodged e-mail correspondence showing the tenancy started on 2nd September 2020, that they paid a deposit of £790 on 28th August 2020. The Applicants also lodged an email from the Respondents confirming the deposit was lodged with Safe Deposit Scotland and a copy of the note of prescribed information dated 5th November 2020 stating that the deposit had been

submitted to Safe Deposit Scotland; e-mails confirming the tenancy ended on 10th April 2022; e-mail from Safe Deposit Scotland dated 1st June 2022 stating the deposit had never actually been lodged with them and copy of various e-mails between the parties dated in May 2022 asking about the deposit and being advised on 19th May 2022 that it would be transferred back to the applicants by bank transfer.

- 3) The original CMD was scheduled for 14th September 2022 and intimation of this was made by sheriff officer on the Respondents. The Applicant sought and was granted a postponement as they were not both able to be present on 14th September.
- 4) The Respondents were advised of the revised date of 27th October by letter and wrote to the Tribunal advising they were not aware of this application or any original hearing date. The Respondents were then sent a further copy of the application and related papers by e-mail on 23rd September 2022.
- 5) By email dated 13th October 2022, the Respondent lodged written representations and copy productions and advised they would be represented at the CMD on 27th October 2022 at 10am. Due to an error these submissions were not provided immediately to the Applicants but were sent to them shortly prior to the CMD commencing.

The Case Management Discussion

- 6) The Case Management Discussion ("CMD") took place by telephone conference on 27th October 2022 as intimated to both parties. The Applicants, Ms O'Dowd and Mr Thomson were both in attendance. No-one from the Respondent was in attendance however the Respondents were aware of the CMD and had made written representations. The legal member waited until 10,10 to see if the Respondent was going to attend or be represented but no appearance was made. As the application had been appropriately intimated and the Respondent was aware of the date and time of the CMD, and the Applicants were keen to proceed, the legal member determined it would be appropriate to continue in the absence of the Respondent but taking account of their written representations.
- 7) The Applicants advised that as per their application they rented the Property from the Respondents from 2nd September 2020 until 10th April 2022, and had thought initially their deposit of £790 had been placed in a tenancy deposit scheme with SDS as they had been advised of this by the Respondent. It was only when they asked about the deposit after leaving the Property that they realised this had not been handled properly and were worried that they might not get their deposit back. They advised they had to keep chasing the Respondent and confirmed they did not actually get their deposit back until 30th May 2022 and this caused them stress as they wanted the deposit back to put towards another property.
- 8) The Applicants confirmed that they had time to look at the Respondent's submissions and noted they accepted that the deposit had not been lodged but with regard to the check -out report the Respondent had lodged the Applicants advised they had never been sent this and had not chance to respond to the claim that further cleaning or work had been required. They noted that if this was the case they would have expected it to go through the correct channels

with the tenancy deposit scheme. They acknowledged however that they did receive the full deposit back from the Respondents although it was nearly 2 months after vacating.

9) The Respondent provided written submissions as follows:

“With reference to the attached Hearing Notification we acknowledge receipt and have detailed our response below

- 1. We confirm that the customers’ deposit payment was received but not transferred to Safe Deposit Scotland in accordance with the Tenancy Deposit Scheme (Scotland) Regulations 2011*
- 2. The deposit payment, £790, was received from the customers prior to the start of the tenancy on 28 August 2020*
- 3. The tenancy start date was 2 September 2020*
- 4. The deposit payment was registered with Safe Deposit Scotland and the prescribed forms sent to the customers on 5 November 2020, please refer to the attached email messages*
- 5. Our internal process requires a Payment Request diary to be raised for the deposit payment to be transferred to Safe Deposit Scotland, unfortunately this action was not completed and as a consequence of this error the deposit payment was not transferred to Safe Deposit Scotland*
- 6. After the customers terminated their tenancy agreement on 10 April 2022 it was realised that the deposit payment had not been transferred to Safe Deposit Scotland and the full deposit amount was paid to the customers by our Finance Team on 31 May 2022*

Since the deposit payment was not transferred we acknowledge that the customers may be entitled to compensation as a penalty notice applied by the First Tier Tribunal

We are continually improving our processes to eliminate the risk of an administration error preventing us from meeting our obligations to our customers

Since April 2021 responsibility for registering and ensuring deposit payments are completed within the legal limit of 30 working days has been consolidated with our Administration Team rather than multiple individual Property Managers. Our Administration Team have a weekly meeting to review deposit payments and to confirm that they have been processed

The Touchstone Edinburgh office manage more than 2300 properties and ordinarily deposit payments are secured in accordance with the Tenancy Deposit Scheme (Scotland) Regulations 2011, there was no deliberate reason for not securing the deposit

At the end of the tenancy Touchstone instructed an independent inventory company to complete a check out inspection, please refer to document Rowett South Drive 74 110422. Based on this report Touchstone would have been entitled to make a claim for deductions since the property was not adequately clean and there was evidence of dilapidations that could not be considered to be reasonable wear and tear but the deposit, £790, was returned in full to the customers

For reference the property was brand new at the start of the tenancy and commercially clean, please refer to document Signed Inventory

74_Rowett_South_Drive

We trust that our explanation and supporting information will be considered if a penalty notice is to be granted by the First Tier Tribunal

We can confirm that Touchstone will be represented at the Case Management Discussion scheduled on 27 October 2022 at 10am”

Findings in Fact and Law

- 10) The parties entered into a tenancy agreement whereby the Applicants were the tenants in the Property rented from the Respondents who were the landlords, and that the tenancy commenced on 2nd September 2020 and ended on 10th April 2022.
- 11) A tenancy deposit of £790 was paid to the Respondent by the Applicants at the commencement of the tenancy.
- 12) The deposit was not lodged with an approved tenancy deposit scheme and remained unprotected throughout the duration of the tenancy.
- 13) The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.
- 14) The Deposit of £790 has been repaid to the Applicants in full.
- 15) The Respondents have admitted liability and provided an explanation of how they have changed their procedures to mitigate against this happening in future.
- 16) The Application is timeous.

Reasons for Decision

- 17) The fact that the Applicants' deposit was not lodged with an approved tenancy deposit scheme as required by Regulation 3 is admitted by the Respondents. The deposit remained unprotected throughout the duration of the tenancy, which was one year and seven and a half months. This deprived both parties of the opportunity of dispute resolution through an approved tenancy deposit scheme at the end of the tenancy and the Applicants had to wait and receive their deposit back directly from the Respondents. Both parties however agreed that the deposit was paid back in full.
- 18) The Regulations were put in place to ensure compliance with the tenancy deposit scheme, and to provide the benefit of dispute resolution for parties. When a breach of the Regulation has taken place the Tribunal must make an award. The Tribunal considers that its discretion in making an award requires to be exercised in the manner set out in the case *Jenson v Fappiano* (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015) by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case. The Tribunal must consider the facts of each case appropriately.
- 19) In coming to its decision the Tribunal considered and took account of the decision of the Upper Tribunal UTS/AP/19/0020 which states: 'Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals.'
- 20) The Tribunal considered this to be a serious matter, although not one at the most serious end of the scale. The Respondent was aware of the Regulations. They have advised that they rent out a large number of properties and are aware of their duties to lodge a tenancy deposit in accordance with the Regulations. They had taken steps to start the process of lodging the deposit

but had not followed through and no steps were taken to check that until the end of the tenancy.

- 21)** The Applicants were entitled to have confidence that the Respondent would comply with their duties as a landlord and that their tenancy would be protected. Their deposit was eventually returned to them but only after nearly 8 weeks. The Tribunal has taken into account that the Respondents have admitted liability, have repaid the full deposit, and have advised that they have taken steps to safeguard against this kind of mistake in the future. With regard to any potential issues with the condition of the Property at the end of the tenancy this is not relevant to this application and has not been taken into account.
- 22)** Taking all the circumstances into account, the Tribunal decided it would be fair and just to award a sum of £1,185 to the Applicants, which is one and half times the tenancy deposit.

Decision

The Tribunal grants an order against the Respondent for payment to the Applicants of the sum of £1,185.

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.

Jan Todd

Legal Member/Chair

27th October 2022
Date