



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

**Chamber Ref: FTS/HPC/PR/22/1485**

**Re: Property at 35 Marischal Street, Castlegate, Aberdeen, AB11 5AD (“the Property”)**

**Parties:**

**Miss Joanna Piechnik, 2A Girdlestone Place, Aberdeen, AB11 9LB (“the Applicant”)**

**Mr Ian McCann, Ms Suzanne McCann, 26 Wellgrove Crescent, Westhill, Aberdeenshire, AB32 6TH (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (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 in the amount of £400 should be made.**

**Background**

The Applicant lodged an application on the 18<sup>th</sup> May 2022 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. Tenancy Agreement dated 20<sup>th</sup> July 2021.

The Tribunal wrote to the Applicant asking her to confirm when the tenancy had come to an end. In an email of 29<sup>th</sup> May 2022 she confirmed it ended on 15<sup>th</sup> March 2022. The Applicant also confirmed that the amount of the deposit was £400.

The papers were served on the Respondent by Sheriff Officers.

On 16<sup>th</sup> August 2022 the Respondents lodged Written Submissions with the Tribunal. In those submissions they accepted that they omitted to lodge the deposit of £400 in an approved scheme. They said that they managed the flat personally and did not use a letting agent. They were involved, at the time of entering in to the lease, in trying to save their business.

The Respondents maintained in their Written Submission that they should retain £200 of the deposit as the Applicant had not given the correct notice to terminate the lease. They did not consider it to be unreasonable as the Applicant had failed to pay rent. They acknowledged that they had failed in their legal duties but thought that the Applicant would acknowledge that they had been good landlords. They confirmed that they would be prepared to reimburse £200 to the Applicant immediately. They asked that the maximum penalty not be imposed. They acknowledged that they had made an error, but considered they had good grounds for the position they took in retaining £200, and that imposing the maximum penalty would be excessive and unfair.

The Respondents confirmed that they did not wish to participate in a hearing and asked for a decision to be made based on their written representation.

### **Case Management Discussion**

The Case Management Discussion (“CMD”) took place by teleconference. The Applicant represented herself.. The Respondents did not attend and were not represented.

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

The Chairperson confirmed with the Applicant that she was seeking a sum, to be determined by the Tribunal, in respect of the Respondents not lodging her deposit in an approved scheme. She had no comments to make in relation to the Respondents’ Written Submission apart from to confirm that she had agreed that the Respondents could retain £200 of the deposit.

### **Findings In Fact**

1. The Applicant entered in to a tenancy agreement for the property commencing 20<sup>th</sup> July 2021;
2. The Applicant paid a deposit of £400;
3. The Respondents did not pay the deposit in to an approved scheme;
4. The tenancy came to an end on 15<sup>th</sup> March 2022;
5. The parties agreed that the Respondents should retain £200 of the deposit;
6. The Respondents did not pay the remaining £200 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 tenancy began on 20<sup>th</sup> July 2021 and ended on 15<sup>th</sup> March 2022. The deposit was not lodged in a scheme. The Respondents had clearly breached the regulation and accepted that breach.

Rule 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.

In this case the deposit was not lodged at all. The tenancy ran for a period of around nine months. The Applicant's money was unprotected for that length of time.

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 as it is not their money.

The Tribunal did not consider the breach to be at the top end of the scale, and the Respondents accepted their breach.

In all the circumstances the Tribunal decided to award a sum equivalent to the amount of the deposit should be awarded.

## **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.**

**A. Kelly**

08/09/22

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**Legal Member/Chair**

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**Date**