



**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/20/0403**

**Re: Property at 8F Union Street, Stirling, FK8 1NY (“the Property”)**

**Parties:**

**Miss Georgia Brawley, Miss Mary-Kate McDowell, 20 Ardayre Road, Prestwick,  
KA9 1QL; 24 Springfield Road, Stirling, FK7 7QN (“the Applicants”)**

**Mrs Aileen Jardine, 26 Melrose Road, Galashiels (“the Respondent”)**

**Tribunal Members:**

**Andrew Cowan (Legal Member)**

**DECISION**

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber)  
 (“the Tribunal”) determined that an order for payment of the sum of £725  
 in terms of Regulation 10 (a) of The Tenancy Deposit Schemes  
 (Scotland) Regulations 2011 should be made.**

**Background**

- 2. This is an application, dated 23<sup>rd</sup> January 2020, brought in terms of Rule 103  
 (Application for order for payment where Landlord failed to carry out duties in**

relation to tenancy deposits) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended. The application is made under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).

3. This case called for a Case Management Discussion on 11<sup>th</sup> August 2020. Due to the ongoing disruption caused by the COVID-19 pandemic, the hearing took place using tele-conferencing facilities. The Applicants and the Respondent all took part in the conference call.
4. The Applicants provided with their application a copy of the tenancy agreement in relation to their former lease of the Respondent’s property at 8F Union Street, Stirling.
5. The Respondent had lodged a written submission with the Tribunal dated 27 June 2020. In that submission the Respondent had acknowledged that, due to oversight on her part, she had failed to lodge the Applicants’ tenancy deposit with an approved scheme as required by the 2011 Regulations.

## **Findings in Fact**

6. The following facts were agreed by the parties at the CMD:-
  - a. The Applicants and the Respondent were parties to a tenancy agreement, being Tenants and Landlord respectively.
  - b. The tenancy agreement commenced on 16<sup>th</sup> May 2019..
  - c. The tenancy agreement terminated on 16<sup>th</sup> December 2019..
  - d. A tenancy deposit of £725 was paid by the Applicants to the Respondent by the start date of the Tenancy.
  - e. The Respondent failed to pay the tenancy deposit into an approved scheme within 30 working days of the beginning of the tenancy, or at any time during the term of the Tenancy,

- f. The Respondent did pay the deposit into an approved scheme on 18<sup>th</sup> December 2019 being three days after the Tenancy had terminated.
- g. The tenancy deposit was repaid to the Applicants within one month of the end of the Tenancy (after deduction of the sum of £60 in relation to cleaning costs). The return of the deposit was administered by an approved tenancy deposit scheme. .

## **Reasons for Decision**

- 7. In terms of Rule 18 (1) of the Procedure Rules the First-tier Tribunal—
  - (a) may make a decision without a hearing if the First-tier Tribunal considers that—
    - (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
    - (ii) to do so will not be contrary to the interests of the parties.
- 8. Regulation 3 of the 2011 Regulations (which came into force on 7 March 2011) provides as follows:

“(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 into the scheme administrator of an approved scheme; and
  - (b) Provide the tenant with the information required under regulation 42.”
- 9. Regulation 10 of the 2011 Regulations provides as follows:

“If satisfied that the landlord did not comply with any duty in regulation 3 of 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 requires under regulation 42.”

10.The Tribunal is satisfied that the Respondent did not comply with her duty under Regulation 3, and accordingly it must order the Respondent to pay the Applicants an amount not exceeding three times the amount of the tenancy deposit.

11.In reaching a decision, the Tribunal has regard to the comments of Sheriff Welsh in *Jenson v Fappiano*, 2015 G.W.D 4-89, at paragraph 11. In determining a possible sanction in this type of cases, the Tribunal is exercising judicial discretion, which he characterised as follows:-

“1. Judicial discretion is not exercised at random, in an arbitrary, automatic or capricious manner. It is a rational act and the reasons supporting it must be sound and articulated in the particular judgement.

2. The result produced must not be disproportionate in the sense that trivial noncompliance cannot result in maximum sanction. There must be judicial assay of the nature of the noncompliance in the circumstances of the case and a value attached thereto which sounds in sanction.

3. A decision based on judicial discretion must be fair and just.”

12.In the case of *Tenzin v Russell* 2015 Hous. L.R.11, an Extra Division of the Inner House of the Court of Session confirmed that the amount of any award in respect of regulation 10(a) of the 2011 Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.

13. The Applicants sought an award of twice the deposit value.

14. The Tribunal took some guidance on the amount of any sanction from the decision by Sheriff Ross ([2019] UT 45 Darren Rollett and Julia Mackie) which sets out: " 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." None of these factors were present in this case.

15. The Respondent explained in her submission that there were certain personal matters which may have contributed to her failure to lodge the deposit with an approved scheme. However, the 2011 Regulations are there to be complied with for the protection of tenants in respect of their deposit and to ensure that they can obtain repayment of their deposit at the conclusion of the lease.

16. The breach in this case is aggravated by the fact the deposit was not protected for the full term of the Tenancy.

17. The Tribunal does, however, accept that the circumstances do provide some mitigation in respect of the sum to be awarded in the exercise of its judicial discretion. In the Tribunal's opinion, important to the assessment of sanction is the fact that the landlady has admitted her non-compliance.. Having recognised her failure to lodge the deposit with an approved scheme she took steps to protect the deposit by lodging it with an approved scheme after the end of the Tenancy, thus affording the Applicants the opportunity to use the scheme to adjudicate on any tenancy dispute. The deposit in this case was returned to the Applicants (after deduction of a cleaning cost of £60).

18. Balancing these various competing factors in an effort to determine a fair, proportionate and just sanction in the circumstances of this application, the Tribunal considers that the sum of £725.00 (being the amount of the tenancy deposit) is an appropriate sanction to impose.

## **Decision**

19. For the foregoing reasons, the Tribunal orders the Respondent in respect of its breach of Regulation 3 of the 2011 Regulations to make payment to the Applicant of the sum of £725.00 in terms of Regulation 10(a) of the 2011 Regulations.

## **Right of Appeal**

20. 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.

**Andrew Cowan**

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**Legal Member/Chair**

**11th August 2020**

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**Date**