



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/20/0450**

**Re: Property at 138 Victoria Street, Stromness, KW16 3BU (“the Property”)**

**Parties:**

**Dr Timothy Kasoar, Miss Alice Bucker, Flat 6, 9 Garvald Street, Edinburgh, EH16 6FB (“the Applicants”)**

**Mr James Stronach, Mrs Cathy Stronach, 138 Victoria Street, Stromness, Orkney, KW16 3BU (“the Respondents”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

**Decision**

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

**Background**

This is an application dated 6<sup>th</sup> February 2020 brought in terms of Rule 103 (Application for order for payment where landlord has not paid the deposit into an approved scheme) 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”).

The Applicants seek payment of compensation in respect of an alleged failure by the Respondents to pay the deposit they assert they provided of £300.00 in relation to the tenancy agreement into an approved scheme within 30 days of receipt of that sum.

The Applicants provided with their application copies of an informal tenancy agreement and various e-mails between the parties.

The Respondents at present work abroad in Malaysia, which they informed the Tribunal has a poor postal system in the location where they currently reside. The Tribunal had arranged service by advertisement before the Respondents made contact with it by e-mail, and thereafter the notification, application, papers and guidance notes from the Tribunal were intimated to the Respondents by e-mail. The Respondents confirmed that the Property remains their home in Scotland.

### **The Case Management Discussion**

A Case Management Discussion was held on 10<sup>th</sup> December 2020 by Tele-Conference. The Applicants participated, and were not represented. The First Respondent, James Stronach, participated, and was not represented. The First Respondent represented his wife, the Second Respondent.

The Applicants explained that they had paid the deposit of £300.00 to the Respondents at the commencement of the tenancy in early September 2019. They left the tenancy on 2<sup>nd</sup> February 2020, and shortly after the Respondents repaid the deposit under deduction of a disputed amount of £116.20.

The Applicants stated that the deposit had not been paid into an approved scheme, and sought compensation of three times the amount of the deposit. They also stated that the Respondents had not registered as landlords on the register of landlords.

The First Respondent, to his credit, was very candid in accepting that the Applicants paid the deposit of £300.00 in September 2019, and that the Respondents had repaid the deposit to the Applicants under deduction of the sum of £116.20 in respect of sums the Respondents assert are due to them in terms of the lease agreements.

The First Respondent explained that the Respondents had rented the Property to the Applicants on a non-commercial basis in an effort to assist a friend of a friend. They had not appreciated that in agreeing to let the Property to the Applicants for a below market rate rent, that such an informal arrangement legally constituted a lease, and in consequence did not appreciate that they needed to register as landlords on the register of landlords and to pay the deposit into an approved scheme.

The Respondents became aware that they were in breach of their legal obligations only at the end of the tenancy agreement. By that time, they thought it was too late to pay the deposit into a scheme, and instead simply repaid it to the Applicants under deduction of sums they believe remain due in terms of the agreement.

The First Respondent stated that they did not rent out any other properties, but that they had previously on occasion let out the Property solely to friends on an informal and temporary basis.

## Reasons for Decision

This application was brought timeously in terms of regulation 9(2) of the 2011 Regulations.

Regulation 3 of the 2011 Regulations (which came into force on 7<sup>th</sup> 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 to the scheme administrator of an approved scheme; and  
(b) provide the tenant with the information required under regulation 42.”

The Respondents as landlord were required to pay the deposit into an approved scheme. They accepted that they failed to do so.

Regulation 10 of the 2011 Regulations provides as follows:

“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 Tribunal is satisfied that the Respondents did not comply with their duty under regulation 3, and accordingly it must order the Respondents to pay the Applicants an amount not exceeding three times the amount of the tenancy deposit.

In the case of *Jenson v Fappiano* 2015 G.W.D 4-89, Sheriff Welsh opined in relation to regulation 10 of the 2011 Regulations that there had to be a judicial assay of the nature of the non-compliance in the circumstances of the case and a value attached thereto which sounded in sanction, and that there should be a fair, proportionate and just sanction in the circumstances of the case. With that assessment the Tribunal respectfully agrees.

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.

In determining what a fair, proportionate and just sanction in the circumstances of this application should be, the Tribunal took account of the facts that the Respondents had

no specialised knowledge of housing law or regulations, that they did not engage in the letting of property on a commercial basis, had misunderstood the need for the deposit to be placed with an approved scheme even where a property was leased on an informal and non-commercial basis, had repaid the balance of the deposit which they believe is due to the Applicants at the termination of the tenancy, and accepted at the first opportunity before the Tribunal that they were at fault and had contravened Regulation 3 of the 2011 Regulations.

In these circumstances, the Tribunal considers that albeit misunderstanding of the terms of the 2011 Regulations is no excuse or defence, the foregoing factors do represent mitigation in respect of the sum to be awarded in the exercise of its judicial discretion.

However, balanced against these mitigating factors, are the fact that the Respondents received payment of the deposit in early September 2019 and did not comply with their legal obligations as a landlord with respect to the 2011 Regulations, which regulations have been enacted to provide protection to tenants in respect of their deposit and ensure that they can obtain repayment of their deposit at the conclusion of the lease, and did not register as landlords on the register of landlord. They erroneously believed that none of the safeguards put in place by legislation applied to them if the tenancy was an informal one, which was clearly incorrect.

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 £450.00 (one and a half times the amount of the tenancy deposit) is an appropriate sanction to impose.

## **Decision**

For the foregoing reasons, the Tribunal orders the Respondents in respect of their breach of Regulation 3 of the 2011 Regulations to make payment to the Applicants of the sum of £450.00 in terms of Regulation 10(a) of the 2011 Regulations.

## **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.**

**Neil Kinnear**

10/12/2020

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**Legal Member/Chair**

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**Date**