

**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/21/1965

Re: Marmel, Main Street, Auchertool, Kircaldy KY2 5TH (“the Property”)

Parties:

Lisa-Marie Wilson, Main Street, Auchertool, Kircaldy KY2 5TH (“the Applicant”)

**Elsbeth Hunter c/o Martin & Co, 93 St Clair street, Kircaldy KY1 2BS (“the
Respondent”)**

Tribunal Members:

Joan Devine (Legal Member)

Decision :

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Respondent should pay to the Applicant the
sum of £110.**

Background

1. The Applicant made an application in Form G ("Application") dated 16 August 2021 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("Rules") stating that the Respondent had failed to timeously lodge a tenancy deposit in an appropriate scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("2011 Regulations"). The documents produced to the Tribunal by the Applicant were:
 - A tenancy agreement dated 16 and 17 January 2020. The tenancy commenced on 23 December 2019.
 - Deposit certificate from Safe Deposits Scotland regarding a deposit of £1195 in respect of the Applicant's tenancy of the Property which stated that the deposit was received on 23 March 2020.
 - Email from the Applicant dated 25 August 2021 in which she stated that the tenancy was ongoing

2. A copy of the Application and notification of a Case Management Discussion ("CMD") fixed for 18 November 2021 at 10 am was given to the Respondent by Sheriff Officer on 20 October 2021. In advance of the CMD, in response to a query from the Tribunal, the Applicant stated in an email dated 11 November 2021 that the deposit was paid in two parts. She said that £995 was paid to the letting agent, Moolet, on 17 December 2019 and a further payment of £200, in respect of being permitted a pet, was paid on 15 January 2020. In advance of the CMD the Respondent sought a postponement which was granted. The Respondent provided a written submission in a letter dated 4 November 2021. A fresh CMD was fixed for 24 January 2022.

Case Management Discussion ("CMD")

3. A CMD took place on 24 January 2022 at 10 am by conference call. The Applicant was in attendance along with Mrs McDougall as a supporter. The Respondent was not present but was represented by her daughter, Marina Koupparis.
4. The Tribunal asked if the tenancy was ongoing. The Applicant said that it was not and that it had come to an end on 19 December 2021.
5. The Tribunal noted that from the papers it appeared that a deposit of £995 was paid on 17 December 2019 and a further £200 was paid on 15 January 2020 but that the deposit was not protected until 23 March 2020. The Applicant and Ms Koupparis confirmed that these dates were agreed. The Applicant said that the £995 was paid to the letting agent, Moolet who then passed it on to the Respondent. She said that the payment of £200 was paid direct to the Respondent. Ms Koupparis confirmed that this was correct. She said that Moolet stopped managing the Property in January 2020.
6. The Tribunal noted the terms of sections 3, 9 and 10 of the 2011 Regulations and asked Ms Koupparis if the Respondent was aware of the need to lodge the deposit with an approved scheme within 30 working days of commencement of the tenancy. She said that the Respondent was aware of the requirement of the 2011 Regulations. The Tribunal asked why there had been a failure to comply with the 2011 Regulations. Ms Koupparis said that the Respondent had a number of personal issues ongoing at the relevant time. She said that the Respondent lost her mother in May 2019 after a short illness. She had lost her father a year before that. Ms Koupparis said that the Respondent fell into a depression and lost track of time. Ms Koupparis said that the Respondent was sorry that the deposit was lodged late and that there was no malicious intent on her part. She said that the Respondent had contacted that Applicant to explain that the deposit had been lodged. Ms

Koupparis said that her mother left the UK for Cyprus to visit family in January 2020 and returned in July 2020.

7. The Applicant said she was unaware that the Respondent had suffered a bereavement.
8. The Tribunal asked Ms Koupparis if the Property had been let before it was let to the Applicant. She said that it had been the family home before being let to the Applicant. The Tribunal asked Ms Koupparis if the Respondent had other rental properties. Ms Koupparis said that the Respondent did not have other properties but she thought that she may have done many years ago when Ms Koupparis was a child. Ms Koupparis apologised on behalf of the Respondent.
9. Ms Koupparis said that she had attempted to lodge with the Tribunal photographs which showed that the Property was in a poor state of repair. The Applicant said that there was a separate application before the Tribunal which related to an alleged failure by the Respondent to comply with her obligations to maintain the Property in an appropriate state of repair. The Tribunal expressed the view that the state of repair of the Property at termination of the tenancy was not relevant to the current application.
10. Mrs McDougall said to the Tribunal that it takes less than 5 minutes to lodge a deposit with an approved scheme. She also said that if the Respondent was suffering from mental health issues she should not have taken on the management of the Property. Ms Koupparis said that the comment was discriminatory and suggested a certain class of individuals should be excluded from managing a property.
11. The Tribunal noted that parties were in agreement regarding the date on which the deposit was paid and that it had not been lodged timeously in accordance with the 2011 Regulations. In the case of the £995, the Tribunal noted this should have been lodged 30 working days after the commencement of the tenancy on 23 December 2019. It was lodged on 23 March 2020 which was 30 working days late. The deposit of £200 should have been lodged 30 working days after receipt on 15 January 2020. It was lodged on 23 March 2020 which was 17 working days late. The Tribunal noted that there had been an admitted breach of the 2011 Regulations and that an order would be made in terms of section 10 of the 2011 Regulations.
12. The Tribunal expressed the view that it had sufficient information to proceed to make a decision without the need for a further Hearing. The Parties stated

that they were content for the Tribunal to make a decision on the basis of the information presented.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement dated 16 and 17 January 2020.
2. The tenancy commenced on 23 December 2019.
3. The Applicant paid to the Respondent a deposit of £995 on 17 December 2019 and a further £200 on 15 January 2020.
4. The deposit totalling £1195 was received by Safe Deposits Scotland on 23 March 2020.
5. The deposit was not paid to the administrator of an approved scheme in compliance with the timescales set out in Regulation 3 of the 2011 Regulations.
6. The deposit of £995 was paid into an approved scheme 30 working days outwith the timescales stated in the 2011 Regulations.
7. The deposit of £200 was paid into an approved scheme 17 working days outwith the timescales stated in the 2011 Regulations.
8. The Property was the Respondent's main residence prior to the grant of the tenancy in favour of the Applicant.
9. At the time of receipt of the deposit from the Applicant, the Respondent was aware of the need to lodge the deposit in an approved scheme in accordance with the 2011 Regulations.

Reasons for the Decision

1. Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme administrator of an approved scheme within 30 working days of the beginning of the tenancy, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. The Tribunal was satisfied that the Respondent did not lodge the deposit in accordance with the timescales required by the 2011 Regulations. The £995

was lodged 30 working days late and the £200 was lodged 17 working days late.

2. The amount to be awarded is a matter for the discretion of the Tribunal having regard to the factual matrix of the case before it. The Tribunal considered the comments of Sheriff Ross in *Rollett v Mackie* UTS/AP/19/0020. At para 13 and 14 he considered the assessment of the level of penalty and said:

"[13] In assessing the level of a penalty charge, the question is one of culpability, and the level of penalty requires to reflect the level of culpability. Examining the FtT's discussion of the facts, the first two features (purpose of Regulations; deprivation of protection) are present in every such case. The question is one of degree, and these two points cannot help on that question. The admission of failure tends to lessen fault: a denial would increase culpability. The diagnosis of cancer also tends to lessen culpability, as it affects intention. the finding that the breach was not intentional is therefore rational on the facts, and tends to lessen culpability.

[14] 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 aggravating factors is present."

3. The Tribunal considered all of the circumstances presented to it and found it to be of significance that the deposit was unprotected for a reasonably short period, that the Respondent had lodged the deposit without being prompted to do so and that the Respondent had admitted that there had been a breach of the 2011 Regulations. The Tribunal accepted the explanation given by Ms Koupparis for the late lodging of the deposit. The Tribunal was of the view that there were no aggravating factors present in this case of the sort described in *Rollett v Mackie*.
4. The Tribunal found that the breach of the 2011 Regulations was at the lower end of the scale and having regard to factors put forward by both parties determined that the sanction should be £110 in the particular facts and circumstances of this case. This figure is arrived at by taking 10% of the initial deposit of £995 (which was unprotected for 30 working days) adding, 5% of the further deposit of £200 (which was unprotected for 17 working days) and rounding the figure up slightly.

Decision

The Tribunal granted an Order for payment of £110 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.

J. D

Legal Member: Joan Devine

Date: 24 January 2022