

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulations 3 and 10 of the Tenancy
Deposit Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/21/2916

Re: Property at 5 Old Causeway, Kinross, KY13 8DT (“the Property”)

Parties:

Mrs Clare Alashal, 42D Rolland Street, Dunfermline, KY12 7ED (“the Applicant”)

**Waugh Investments Limited, c/o Cornbank Letting Ltd, 25 Braidlaw Park,
Penicuik, EH26 9HF (“the Respondent”)**

Tribunal Members:

Alison Kelly (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay the Applicant £600 by way of compensation.

Background

On 23rd November 2021 the Applicant lodged an Application with the Tribunal under Rule 103 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order for payment, alleging that the Respondent had not lodged the tenancy deposit in an approved scheme in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Lodged with the application were: -

1. Copy Tenancy Agreement with the rental period beginning on 31st January 2020
2. Copy of the deposit details from LPS
3. Copy emails between Applicant and Respondent’s solicitor

The Application was served on the Respondents by Sheriff Officers on 17th December 2021.

The Respondents' letting agent, Diane Watson of Cornbank Lettings, lodged a written submission on 5th January 2022. Said submission admitted the breach and put forward mitigation. She said that the breach had been entirely her fault. It was an error and oversight on her part and had been picked up by her accountants in an audit. The money had been ringfenced in her client account. As soon as the error was noticed the deposit was placed in a Scheme. She had been a letting agent since 2013 and this had not happened in her business before now.

Case Management Discussion

The Case Management Discussion ("CMD") took place by teleconference. The Applicant attended and represented herself. The Respondent was represented by Mrs Diane Watson, Cornbank Lettings. The Chairperson introduced everyone and confirmed the purposes of a CMD in terms of the Rule 17 of the Rules.

The Chairperson asked Mrs Alashal to confirm the details of her application and what she was seeking. She said that her tenancy deposit should have been lodged within 30 days of the commencement of the tenancy but it was not lodged for nearly six months. She sought compensation for the error.

Mrs Watson was asked for her position. She re-iterated what was in her written submission. She said that she held her hands up, it was her error.

The parties agreed that the deposit had been lodged on 18th June 2020.

The parties also agreed that the deposit was still in the Scheme, the Applicant had not claimed it back as she was awaiting the outcome of this application. Both parties were clear that when the deposit was claimed it would be set off against the arrears of rent owed by the Applicant and that there were no issues of damage on which the Scheme would be asked to adjudicate.

The Chairperson said that the issue was straightforward, and it was now for her to assess how serious the breach was and award compensation accordingly. She asked each party if they wished to address her on seriousness and the amount of compensation to be awarded. Each party said that they were content for the Tribunal to decide without further submission.

Findings In Fact

1. The parties entered in to a tenancy agreement for the rental of the property, commencing 31st January 2020;
2. The Applicant paid the Respondent a deposit of £600;

3. The Respondent did not pay the deposit in to an approved scheme within 30 working days of the beginning of the tenancy;
4. The Respondent paid the deposit to LPS on 18th June 2020;
5. The Tenancy came to an end on 31st August 2021;
6. This Application was lodged timeously on 5th November 2021.

Reasons For Decision

Rule 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“TDS”) states:

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.

The tenancy began on 31st January 2020. The deposit was not lodged until 18th June 2020. The Respondents had clearly breached the regulation and accepted that in their Written Submission.

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 of the breach. The Tribunal did not consider this breach to be at the serious end of the spectrum. The deposit was put in to the Scheme on 18th June 2020. This was done as soon as the letting agent's error was spotted. The duty is to place it in a scheme within 30 working days of the commencement of the tenancy. There were approximately 3 months between the two dates, taking in to account weekends and bank holidays. The Tribunal decided to award an amount equivalent to the amount of the deposit.

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.

Legal Member: Alison Kelly

Date: 24th January 2022

Alison Kelly