

**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/22/4118

Re: Property at Flat 1/1 372 Langside Road, Glasgow, G42 8XR (“the Property”)

Parties:

**Mrs Lorna Campbell, Mr Alan Campbell, 22 Buchanan Street, Dumbarton, G82
1JA (“the Applicants”)**

**Miss Lynne Roberts, 48/4 East Claremont Street, Edinburgh, EH7 4JR (“the
Respondent”)**

Tribunal Members:

Neil Kinnear (Legal Member)

Decision

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

Background

This was an application dated 15th November 2022 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 was made under Regulation 9 of the *Tenancy Deposit Schemes (Scotland) Regulations 2011* (“the 2011 Regulations”).

The Applicants sought payment of compensation in respect of an alleged failure by the Respondent to pay the deposit the Applicants provided of £2,800.00 in relation to the tenancy into an approved scheme within 30 days of receipt of that sum.

The Applicants provided with their application details of the tenancy agreement and various supporting documentation.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 23rd December 2022, and the Tribunal confirmed execution of service.

Both parties helpfully e-mailed further written submissions and documents to the Tribunal in advance of the Case Management Discussion.

The Case Management Discussion

A Case Management Discussion was held on 17th February 2023 by Tele-Conference. The Applicants both participated, and were not represented. The Respondent participated, and was not represented. Her partner, Mr Paterson, was present as the Respondent's supporter.

The Respondent accepted that she was in breach of the 2011 Regulations. The Respondent explained that she had been aware of her obligations to lodge a deposit in an approved scheme, but that she had not done so through oversight on her part.

The Respondent explained that the tenancy of the Property was her original home, which she now let out after a period working abroad and after moving in with her partner. It was not intended to be her main source of income, but as a result of covid, her business was generating no income and she was supported by her partner. The income from the Property was used to pay the mortgage on the Property and other expenses in relation thereto. She was a relatively inexperienced landlord.

The Respondent explained that her failure to pay the deposit into an approved scheme was due to inadvertence on her part, and for which she bore responsibility. She had simply overlooked doing so and as a result of the issues she had to deal with as a result of the loss of her business income and the Covid pandemic.

When the Applicants sought return of their deposit at the end of the lease in November 2022, the Respondent realised her mistake, and paid the deposit into an approved scheme on 15th November 2022.

The Applicants were not in a position to gainsay the Respondent's explanation, and suggested that a "mid-range" of compensation would be appropriate to reflect their concern at the deposit not having been lodged for the duration of the tenancy from 15th July to 12th November 2022.

The Applicants had also suffered a number of family bereavements, and the loss of business income due to Covid, and their realisation that their deposit had not been protected had caused them considerable stress.

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 7th 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 Respondent as landlord was required to pay the deposit into an approved scheme. She accepted that she 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 was satisfied that the Respondent did not comply with her duty under regulation 3, and accordingly that it must order the Respondent 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 Respondent had no specialised knowledge of housing law or regulations, that she did not engage in the letting of property as her full-time occupation, had overlooked paying the deposit into an approved scheme due to her personal situation caused by the Covid pandemic, had swiftly paid the deposit into an approved scheme upon realising her omission at the end of the tenancy, and accepted at the first opportunity before the Tribunal that she was at fault and had contravened Regulation 3 of the 2011 Regulations.

In these circumstances, the Tribunal considered that albeit these factors were no excuse or defence to not complying with the 2011 Regulations, they did represent mitigation in respect of the compensation to be awarded in the exercise of its judicial discretion.

However, balanced against these mitigating factors, were the fact that the Respondent received payment of the deposit in July 2022 and did not comply with her 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 to ensure that they can obtain repayment of their deposit at the conclusion of the lease, and the fact that the realisation that the deposit had not been lodged in an approved scheme and during which the Applicants did not have the security provided by such lodging had caused them considerable stress.

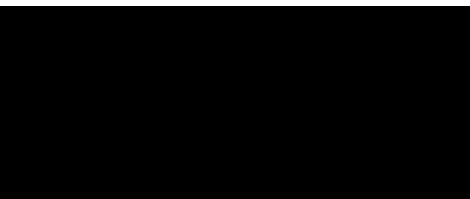
Balancing these various competing factors in an effort to determine a fair, proportionate and just sanction in the circumstances of this application, the Tribunal considered that the sum of £2,800.00 (once the amount of the tenancy deposit) was an appropriate sanction to impose.

Decision

For the foregoing reasons, the Tribunal ordered the Respondent in respect of her breach of Regulation 3 of the 2011 Regulations to make payment to the Applicants of the sum of £2,800.00 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.



Legal Member

Date: 17/01/2023

