



**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/23/0363

Re: Property at 30 Flat E, St Clair Street, Aberdeen, AB24 5AJ (“the Property”)

Parties:

Mr David Chambury, 30 Flat E, St Clair Street, Aberdeen, AB24 5AJ (“the Applicant”)

Ms Supanee O'Neill, 37 Victoria Road, Aberdeen, AB11 9LS (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for payment of the undernoted sum to the Applicant:

SUM OF SEVEN HUNDRED AND EIGHTY POUNDS (£780) STERLING

- Background
- 1. An application was submitted to the Tribunal under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. Said application sought an order be made against the Respondent on the basis that the Respondent had failed to comply with their duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).

- The Case Management Discussion

2. A Case Management Discussion (“CMD”) took place on 13 April 2023 by conference call. The Applicant was personally present and representing himself. There was no attendance by, or on behalf of, the Respondent. The Respondent had, in advance of the CMD, submitted her position in writing as regards the application.
3. The Applicant sought an order from the Tribunal on the basis that the Respondent had failed to comply with their duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the 2011 Regulations.
4. The Applicant submitted that he had entered into a tenancy with the Respondent which commenced 24 September 2022. A copy of the tenancy agreement was lodged with the application. The Applicant paid a deposit of £390 to the Respondent prior to the start of the tenancy. He asked the Respondent at the start of the tenancy if the deposit had been placed into a tenancy deposit scheme and she advised him that it had. The Applicant produced evidence from all three Scottish tenancy deposit schemes alongside his application and which confirmed that none of them held the deposit.
5. The Applicant submitted that he had experienced difficulties with the Respondent attempting to unlawfully evict him from the Property and which required him to call the Police. He had taken advice from Shelter Scotland on his position. The Applicant sought an award of three times the amount of the deposit in terms of Regulation 9 of the 2011 Regulations.
6. The Respondent accepted in writing that she had failed to lodge the deposit into a tenancy deposit scheme. She produced evidence that this had now been done since the raising of the application (and which was accepted by the Applicant). The Respondent’s written submission is summarised as follows:
 - (i) The Respondent had previously instructed a lawyer to assist her with this issue but could no longer afford to pay them, and is now seeking assistance from CAB;
 - (ii) The Respondent was unaware of her obligations to lodge the deposit into a tenancy deposit scheme;
 - (iii) The Applicant had not paid rent for the last five months;
 - (iv) The Applicant had used his deposit to cover a month’s rent which had not been paid;
 - (v) The Respondent would like the Applicant to move out so she can live in the flat herself;
 - (vi) The Respondent found it “*very cheeky that he wants compensation.*”

- Findings in Fact

7. The Tribunal made the following findings in fact:

- (i) The parties entered into a private residential tenancy which commenced 24 September 2022;
- (ii) The Applicant paid a deposit of £390 to the Respondent;
- (iii) The Respondent failed to lodge the deposit of £390 into an approved tenancy deposit scheme under Regulation 3 of the 2011 Regulations;
- (iv) The Respondent failed to provide the statutory information to the Applicant under Regulation 42 of the Regulations;
- (v) The Tenancy is ongoing;
- (vi) The Respondent has now lodged the deposit into an approved tenancy deposit scheme.

- Findings in Law

8. The Tribunal made the following findings in law:

8.1 The Respondent was in breach of their duties under Regulation 3 of the 2011 Regulations, which states as follows:

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.

8.2 The Respondent was in breach of their duties under Regulation 42 of the 2011 Regulations, which states as follows:

42.—(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).

(2) The information is—

(a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;

(b) the date on which the tenancy deposit was paid to the scheme administrator;

(c) the address of the property to which the tenancy deposit relates;

(d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;

(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and

(f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.

(3) The information in paragraph (2) must be provided—

(a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or

(b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.

8.3 The Tribunal must grant an order in terms of Regulation 10 which states as follows:

10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—

(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 sheriff 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.

- Reasons for Decision

9. The Tribunal was satisfied that the Respondent was in breach of their duties under Regulations 3 and 42 as aforesaid. This was by the Respondent's own admission.
10. The 2011 Regulations were introduced to provide security for tenants in paying over deposits to landlords and to address an issue with some landlords taking tenancy deposits and then failing to pay them back where they were lawfully due at the end of the tenancy. The 2011 Regulations also provide that parties have access to an independent and impartial dispute resolution mechanism within a scheme to address any deposit deductions which require to be considered.
11. By the Respondent's failure to lodge the deposit into an approved tenancy deposit scheme, the deposit was not protected for a period of almost seven months.
12. The Tribunal noted that the Respondent had set out in her written submissions that she was unaware that she required to lodge the deposit in a tenancy deposit scheme, and that she described the tenancy agreement as "*very short and private in between friends*." The Tribunal did not find this to be a satisfactory explanation. The Respondent had taken the time to draw up a written tenancy agreement and therefore clearly intended to have the Applicant enter into a written contract with her as regards the lease of the Property. On that basis, she should have taken her position as a landlord seriously, and if she was not aware of her legal obligations as a landlord, then she should have either sought professional legal advice before embarking on such a relationship or, at the very least, considered the abundance of information readily available on the internet to landlords to guide her through her legal obligations.
13. The Tribunal considered the written submissions made by the Respondent regarding the Applicant's failure to pay rent, to be entirely irrelevant to the application being determined. Any alleged breach of tenancy by the Applicant following commencement of the lease is entirely separate to the question of the Respondent's legal obligation to lodge the deposit into a tenancy deposit scheme within the statutory timescale. Any such alleged breaches occurred after the Respondent's legal obligation to lodge the tenancy deposit had crystallised. It is for the Respondent to take her own separate action against the Applicant in this regard, if she so wishes.

14. The Tribunal noted that since the application had been raised, the deposit had now been placed into a tenancy deposit scheme and was now being held securely. The Tribunal was not satisfied that there was any evidence before it to suggest that this was a malicious or intentional act on behalf of the Respondent to deprive the Applicant of his deposit, but instead was a situation of a landlord failing to take seriously their legal obligations and failing to educate themselves on same, prior to entering into a contract to lease property. Against that background, the Tribunal was not persuaded that it would be reasonable to make an award at the highest point on the scale.

- Decision

15. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant in the undernoted sum:

SUM OF SEVEN HUNDRED AND EIGHTY POUNDS (£780) STERLING

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.

F. Watson

13 April 2023