



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

Chamber Ref: FTS/HPC/PR/19/2955

Re: Property at 3 Queens Terrace, St Andrews, Fife, KY16 9QF (“the Property”)

Parties:

**Mr John Barnes, Mr Paul Grindlay, 3 Mirrlees Drive, Glasgow, G12 0SH; Flat
3/2, 67 Cleveden Road, Glasgow, G12 0JN (“the Applicant”)**

**Ms Jane Rose, 9 Viewmount Road, Wormit, Newport-On-Tay, DD6 8NJ (“the
Respondent”)**

Tribunal Members:

Ewan Miller (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Applicant should be granted a payment order
against the Respondent in the sum of ONE THOUSAND FOUR HUNDRED AND
FIFTY FIVE POUNDS (£1455) ONLY**

Background

The Respondent was the owner of the Property and had let it to the Applicant for a number of years. The tenancy had come to an end at the end of June 2019. The Applicant alleged that they had tried to get the return of the deposit from the Respondent but had not been able to get a response. Accordingly they felt they had no option but to apply to the Tribunal.

The tribunal had the following papers before it:-

- The Applicant’s application to the Tribunal dated 20 September 2019
- Copy style tenancy of the Property

Case Management Discussion (“CMD”)

The Tribunal held a Case Management Discussion (“CMD”) at Hilltown Community Centre, Alexander Street, Dundee at 2pm on 14 January 2020. Mr Barnes of the Applicant was present and represented himself and Mr Grindlay. A third Applicant Mr Smith had withdrawn his element of the application the day before the CMD. The Respondent was present and was represented by her husband Mark Smith.

Findings in Fact

The Tribunal found the following facts to be established:-

- The Respondent was the owner of the Property;
- The Respondent had let the Property to the Applicant for a number of years;
- The tenancy between the parties had come to an end on 24 June 2019;
- Mr Barnes had paid a deposit of £490 and Mr Grindlay a deposit of £480;
- The Respondent had failed to put the monies on deposit until 11 December 2019, accordingly there had been a breach of the regulations

Reasons for the Decision

The Tribunal noted that the Respondent accepted that there had been a breach of the tenancy deposit regulations. They advised that they only had one rental property and had been unaware of the requirement to place the deposit in one of the approved schemes. The Respondent’s mother had died around the time the deposit had been due to be returned and, as a result of family pressures, they had not responded to the Applicant’s requests for return of the deposit. They apologised to the Tribunal and the Applicant for this. Once they had received paperwork for the Tribunal they had realised the error and the deposits had been protected from 11 December 2019.

The Applicant confirmed that the parties had had a good relationship through the tenancy and it was unfortunate that matters had got to this stage. They had tried to communicate with the Respondent but had had no response. They had been left with no option but to apply to the Tribunal.

It was readily apparent that there had been a breach of the Regulations. Accordingly the only question before the Tribunal was the level of penalty to be imposed. In reaching its decision the tribunal was aware of the guidance in the case of *Jenson v Fappiano 2015*. This indicated that it was not the case that an automatic 3x the deposit should be imposed but rather the surrounding circumstances should be looked at in ascertaining the level of penalty up to the possible maximum.

In the case the Tribunal viewed as positive factors in favour of the Respondent that (a) they were contrite about the matter (b) that they were not serial landlords who would undoubtedly have been aware of the legislation and (c) when the issue had become known to them they had taken steps to put the deposit in to an approved scheme. Against that, the deposits had been unprotected for several years and several months had gone by after the end of the tenancy with no communication from the Respondent to the Applicant.

Taking in to account the whole circumstances the Tribunal was of the view that the positive and negative factors were relatively equal. Accordingly the Tribunal decided to take the view that the midpoint of the potential penalty should apply. The Tribunal therefore imposed a penalty of 1.5 times the deposits paid by the Applicant, being a sum of £1455.

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.

E. Miller

Legal Member/Chair

14/1/2020

Date