



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulations 3 and 9 of the Tenancy
Deposit Scheme (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/18/0548

**Re: Property at 6 Bacchante Way, Kingseat, Aberdeen, Aberdeenshire, AB21
0AX (“the Property”)**

Parties:

**Mr Thomas Boyle, 6 Bacchante Way, Kingseat, Aberdeen, Aberdeenshire,
AB21 0AX (“the Applicant”)**

**Mr Nathaniel Leadbitter, 19 Braecroft Drive, Westhill, Aberdeenshire, AB32 6FF
 (“the Respondent”)**

Tribunal Members:

Ewan Miller (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 £750**

Background

The Applicant applied to the Tribunal under Rule 103 of The First Tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017

The Applicant alleged that the Respondent had failed to lodge his deposit for a lease of the Property from the Respondent as specified the Tenancy Deposit Scheme (Scotland) Regulations 2011

The Parties had been notified that a Case Management Discussion had been set for 13 September 2018 and that it was open to the Tribunal at that discussion to make a decision on the matter.

The Case Management Discussion ("The CMD")

The CMD took place at the Ferryhill Community Centre, Aberdeen on 13 September 2018. The Applicant was present and represented himself. The Respondent was not present but was represented by Mr Aaron Doran of Raeburn Christie Clark and Wallace, Solicitors, Aberdeen.

The Applicant set out some background to the matter and the fact that this was another facet of a dispute between himself and the Respondent. Other sittings of the Tribunal had taken place in relation to applications by the Respondent for possession and payment of rent arrears against the Applicant. The Applicant submitted that he had always been treated differently by the Respondent compared to previous tenants of the Property. The Applicant was adamant that he had enquired of the Respondent at a meeting in mid-January as to the whereabouts of the deposit.

The discussion at the CMD centred primarily around the appropriate level of penalty to be imposed on the Respondent. The Respondent accepted that they were in breach of the deposit regulations as the deposit had not been lodged timeously. The Applicant sought the maximum penalty of 3 times the deposit whereas the Respondent's agent argued that a nominal or token sum should be imposed.

The Respondent's agent referred to a number of cases relating to tenancy deposits (Jenson v Fappiano, Kirk v Singh, Cooper v Marriot and Russell-Smith v Uchegbhu). The agent submitted that the error had been administrative, that the matter had been rectified almost immediately upon discovery, that the Respondent had no history of not properly using the scheme and that the deposit had been unprotected for a short period of time.

Findings in Fact

The Tribunal found the following facts to be established:-

- The Parties entered in to a Private Rented Tenancy on 1 December 2017 of the Property
- That the Applicant had paid a deposit of £600 to the letting agent of the Respondent upon entering the lease of the Property
- That the deposit was not lodged with an appropriate scheme in terms of the deposit regulations until 26 February 2018
- That as a result of not lodging the deposit timeously the Respondent was in breach of the deposit regulations
- That the Applicant queried the whereabouts of the deposit with the Respondent around mid-January during a meeting at the Property

Reasons for Decision

The Tribunal noted that there was limited dispute around the facts in this particular matter. A deposit had been paid by the Applicant to the letting agent of the Respondent. The deposit had been paid by the letting agent to the Respondent in

December 2017. The Respondent had failed to put the deposit in to an approved scheme timeously.

The only fact in dispute was the question of whether the Applicant had queried the whereabouts of the deposit with the Respondent at their meeting at the Property in mid-January 2018. The Applicant appeared to the Tribunal to be a credible individual and he was adamant that he had queried it to the Respondent. The meeting at the Property had primarily been about repairs and the Tribunal could envisage that would have been the Respondents' principal focus rather than a question about the deposit. On balance, therefore, the Tribunal accepted the Applicant's assertion that he had raised it.

The Tribunal was particularly mindful of the case of *Jenson v Fappiano* and the view of Sheriff Welsh in that case. The Tribunal has a discretion to exercise in a case such as this, to determine the penalty applicable. In the words of Sheriff Welsh "the judicial act, in my view, is not to implement Government policy but to impose a fair, proportionate and just sanction in the circumstance of the case".

It was therefore incumbent upon the Tribunal to weigh up the circumstances surrounding the Respondent's failure to lodge the deposit and (a) to determine how serious a breach of the regulations this was and (b) place that breach on a financial scale up to a maximum of three times the deposit.

In this particular case, the Tribunal did not view the Respondent's conduct as being duplicitous or in some way designed to deny the protection of the deposit scheme to the Applicant. The Tribunal accepted that this was an oversight on the part of the Respondent.

Factors in favour of the Respondent were that meant the penalty imposed by the Tribunal should not be at the top of the scale:-

- that he had used the deposit scheme correctly in the past before;
- he rectified the matter immediately upon being emailed by the letting agent;
- there was the potential for confusion as the letting agent, on this occasion, had only found the tenant and not continued to manage the Property thereafter. In previous cases the letting agent had put the deposit in to the scheme;
- The deposit had been unprotected for a relatively short period of time.

That said, the Tribunal found there to be a number of factors that meant the penalty imposed by the Tribunal should be more than a nominal amount:-

- The Respondent was aware of the deposit scheme and the importance of complying with it;
- That the deposit had been mentioned to him by the Applicant at the meeting in mid-January
- That he ought to have noticed that the deposit had been paid in to his account by the letting agent
- He had received a statement from the letting agent that showed the deposit had been made to him.

Accordingly, whilst the Tribunal was satisfied that the failure to lodge the deposit was not wilful and was an administrative error, nonetheless more care should have been shown and there had been a number of opportunities to the Respondent to have noticed that the deposit had not been appropriately lodged.

On balance, taking all these factors in to account, the Tribunal determined that a penalty of £750 was appropriate.

Decision

The Tribunal determined that the Respondent is liable for a payment of £750 under the relevant regulations for failing to lodge the Applicant's deposit timeously with a relevant deposit scheme

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.

Ewan Miller

Legal Member/Chair

13/12/12

Date