

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/PR/19/2929

**Re: Property at First Floor Left, 10 Orchard Street, Aberdeen, AB24 3DN ("the
Property")**

Parties:

**Miss Minna Herlevi, 48B Nelson Street, Aberdeen, AB24 3DN,
Mr Manil Gajjar, Lochine Cottage, Cairnryan, Wigtownshire, DG9 8QX,
Mr Magni Hansen, 65D Powis Place, Aberdeen, AB25 3TT,
Mr Hayden Judge, 48B Nelson Street, Aberdeen, AB24 5ES ("the Applicants")**

**Mr John Henderson and Mrs Kate Gwynne, both residing at 1 The Meadows,
Maryculter, Aberdeen, AB12 5GZ ("the Respondents")**

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined to make an order for payment against the Respondent in
the sum of One thousand pounds (£1,000) Sterling.**

Background

- 1** By application dated 16 September 2019 the Applicants sought an order for payment as a result of the Respondents failure to lodge their deposit in an approved tenancy deposit scheme. The application submitted cited Mr John Henderson as the sole Respondent.
- 2** By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 19 November 2019.

- 3 A copy of the application paperwork together with notification of the date, time and location of the Case Management Discussion was served Mr Henderson by Sheriff Officers.
- 4 Mr Henderson responded to the Tribunal by email dated 6 November 2019. He confirmed that the deposit had been lodged with SafeDeposits Scotland and provided copy paperwork which had been submitted to the scheme as part of the dispute resolution process.
- 5 The first Case Management Discussion took place on 19th November 2019. The Legal Member noted that Mr John Henderson was named as the Respondent, when it was Mrs Kate Gwynne named as the Landlord in the Tenancy Agreement. Mr Henderson clarified that Mrs Gwynne was his fiancé and they were joint landlords. The Legal Member therefore adjourned the Case Management Discussion to allow for Mrs Gwynne to be included as a joint Respondent and for the application paperwork to be served upon her.
- 6 Further Case Management Discussions assigned for 7 January 2020 and 14 February 2020 were postponed. The adjourned Case Management Discussion therefore took place on 17 March 2020.

The Case Management Discussion

- 7 The Case Management Discussion took place on 17 March 2020. Mr Henderson was present and representing Mr Gwynne. The Applicants were all present with the exception of Manil Gajjar.
- 8 The Legal Member explained the purpose of the Case Management Discussion. She explained that the Tenancy Deposit Scheme (Scotland) Regulations 2011 were clear in that were the Tribunal to make a finding that there had been a breach it would be obliged to make an order for payment of up to three times the amount of the deposit. The Legal Member then explained that it appeared from her reading of the paperwork that the deposit had been lodged on 15th August 2019 which was beyond the termination date of the tenancy and therefore beyond the statutory timescale for lodging the deposit. Both parties agreed that this was correct. The Legal Member therefore explained that she considered the Tribunal was able to make a finding that there had been a breach of the Regulations by the landlords.
- 9 The Legal Member thereafter asked the parties to address the Tribunal on the level of sanction that should be awarded, explaining what kind of material may be relevant in this regard.
- 10 Mr Judge spoke on behalf of the Applicants. He explained that only a portion of the deposit had been lodged with the tenancy had ended, namely £1175. A

total sum of £2175 had been paid to the Respondents as per the terms of the tenancy agreement. Mr Judge explained that shortly after the tenancy had ended the Respondents had returned the sum of £1,000 but had retained the £1,175 pending deductions. The £1175 was then placed in the deposit scheme. Mr Judge confirmed that the Applicants had subsequently received the full amount of the deposit back. In terms of the impact of the deposit having not been placed in a scheme, Mr Judge explained that it had been quite scary initially as the Applicants felt they were in a position where the Respondents were telling them what the deductions were, leaving them with no power in the discussions. They had to argue back, but it felt pointless as the Respondents could just shrug this off. They understood the Respondents to be experienced landlords, albeit they were managing the property on their own. Mr Judge explained that the deposit had been unprotected for quite a long period, however he didn't think that the circumstances justified the maximum award of three times the deposit.

- 11 Mr Henderson then addressed the Tribunal. He explained that he and his wife had previously used agents to manage the property which they had been letting for around ten years. They were not aware of the tenancy deposit scheme and their duties under the Regulations as the agents had handled the deposits. There had never really been any issues in the past. It had been a mistake on their part. When the tenancy came to an end he had paid back £1000 to the tenant but retained the remainder to assess the damage. Once he became aware of the requirement to lodge the deposit with a scheme, he had paid it to Safe Deposits Scotland. Mr Henderson explained that he would ask for any sanction to be at the lower end of the scale.

Relevant Law

- 12 The relevant law is contained within the Tenancy Deposit Scheme (Scotland) Regulations 2011 which provide 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.”

“9.—(1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.”

“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.”

Findings in Fact and Law

- 13 The Applicant and Respondent entered into a Tenancy Agreement which commenced on 1st August 2018.
- 14 The tenancy between the parties is a “relevant tenancy” as defined by Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011.
- 15 Clause 5.1 of the said Tenancy Agreement required the Applicants to make payment of a tenancy deposit in the sum of £2175.
- 16 The Applicants made payment of the sum of £2175 on or around 1st August 2018.
- 17 The tenancy terminated on 31st July 2019;
- 18 The Respondents returned the sum of £1000 to the Applicants from the deposit;

- 19 The Respondents paid the sum of £1175 to SafeDeposits Scotland on 15 August 2019. SafeDeposits Scotland is an approved tenancy deposit scheme.
- 20 The Applicants have received the deposit of £2175 back in full.
- 21 The Respondents are in breach of Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011.

Reasons for Decision

- 22 The Tribunal determined the application having regard to the application paperwork, the written representations from the Respondents and the verbal submissions from the Applicants and the Respondents at the Case Management Discussion. The Tribunal was satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. The Tribunal was further satisfied that the substantive issues were agreed, therefore there was no requirement for a hearing in the matter.
- 23 The 2011 Regulations specify clear duties which are incumbent on landlords in relation to tenancy deposits. Regulation 3 requires a landlord to pay any deposit received in relation to a relevant tenancy to an approved tenancy deposit scheme within thirty working days of the beginning of the tenancy. The deposit must then be held by the scheme until it can be repaid in accordance with the requirements of the Regulations following the end of the tenancy.
- 24 The Tribunal considered it could make a finding at the Case Management Discussion that there had been a breach by the Respondents of Regulation 3. This was a matter of fact agreed between the parties. The Tribunal therefore had to consider the provisions of Regulation 10 which requires that an order for payment be made against the landlord where the Tribunal makes a finding that there has been such a breach. Accordingly the Tribunal had to consider what sanction to impose having regard to the particular facts and circumstances of the case.
- 25 The Tribunal considered the requirement to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach. In doing so the Tribunal took into account the fact that the deposit had remained unprotected for the entire term of the tenancy, it being a matter of agreement that the Respondents had not paid the deposit into an approved deposit scheme until after the tenancy had ended.
- 26 The Tribunal noted that the Respondents had returned the sum of £1000 from the deposit to the Applicants shortly after the tenancy had ended, but had initially sought to hold the remaining sums pending their own assessment of

what deductions were required. However, having subsequently been challenged on this by the Applicants, the Respondents had then lodged the deposit with an approved tenancy deposit scheme. The Applicants had therefore not suffered any detriment through a lack of access to the independent dispute resolution mechanism provided by the approved tenancy deposit scheme and the appropriate independent adjudication had taken place on what deductions should be made from the remaining £1,175. The Tribunal noted that the Applicants had now received the deposit back in full.

- 27 The Tribunal had cognisance of the Respondents position that they were not aware of the requirement to place the deposit in a scheme, having used agents to manage the property in the past. However it is ultimately the Landlord's obligation to ensure that they are aware and that they abide by the legal obligations incumbent on them, including those duties under the Regulations in relation to tenancy deposits. The Tribunal would have expected the Respondents to take such steps as were necessary to ensure they were suitably equipped in terms of their knowledge of the legal requirements when they took on the management of the tenancy, however they had failed to do so in this instance. The Tribunal did however note that the Respondents had fully admitted the breach and had been candid in that regard in the submissions at the Case Management Discussion. The Tribunal further noted that this was the only property they let out, and they could not therefore be said to be professional landlords.
- 28 The Tribunal noted the purpose of Regulation 10, namely to penalise landlords to ensure they comply with the duty to protect and safeguard tenancy deposits. The provisions of Regulation 10 left no discretion where a landlord is found to have failed to comply and permitted an award of up to three times the deposit where a finding of breach is made. The Tribunal did not consider that the circumstances of the case merited an award at the higher end of the scale. However balancing the competing factors in the particular facts and circumstances of this case, the Tribunal considered that a sanction in the sum of £1,000 would be appropriate.
- 29 The Tribunal therefore made an order against the Respondents in the sum of £1,000.

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/Chair

17/3/20

Date