

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 regulations 9 and 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011, as amended (“2011 Regulations”)**

**Chamber Ref:** FTS/HPC/PR/23/2203

**Property:** 12 Natal Place, Cowdenbeath, KY4 8HX  
 (“the Property”)

**Parties:**

**Mr Desmond Colquhoun, 33 Skibo Court, Dunfermline, KY12 7EW and formerly of 12 Natal Place, Cowdenbeath KY4 8HX  
 (“the Applicant”)**

**Mrs Lindalee McCall, 15 Beldorney Place, Dunfermline, KY12 0XN  
 (“the Respondent”)**

**Tribunal Member:**

**Pamela Woodman (Legal Member)**

**Present:**

The case management discussion took place at 10am on Monday 6 November 2023 by teleconference call (“**the CMD**”). The Applicant was not present but was represented by Mrs Grace Walker of Frontline Fife. The Respondent was present. She was accompanied by her daughter as a supporter and was represented by Mr Brian Tait of Morgan Law. The clerk to the Tribunal was Michael Cowie.

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of £500 be made against the Respondent in favour of the Applicant.**

## **BACKGROUND**

1. An application was made to the Tribunal under regulation 9 of the 2011 Regulations and in accordance with the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was

made in terms of rule 103 (*Application for order for payment where landlord has not paid the deposit into an approved scheme*) of the HPC Rules.

2. The order sought from the Tribunal was for a payment order “as compensation for the failure of the landlord to place the deposit in an approved scheme as required by law.”
3. The application was dated 4 July 2023 and was received by the Tribunal on the same date. A previously scheduled case management discussion had been postponed at the request of Mrs Walker.
4. The application was made in terms of rule 103 of the HPC Rules.
5. Rule 103 of the HPC Rules relates to an application made by “a tenant or a former tenant... under regulation 9” of the 2011 Regulations.
6. Regulation 9(1) of the 2011 Regulations is in the following terms:

“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.”

7. Regulation 3(1) of the 2011 Regulations is in the following terms:

“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.”

8. Regulation 9(2) of the 2011 Regulations is in the following terms:

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

9. Regulation 10 of the 2011 Regulations is in the following terms:

“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.”

## PROCEEDINGS

10. Mrs Walker explained that the Applicant had first contacted Frontline Fife on 15 June 2023, which the Tribunal noted was also the date of signature of the notice to leave included within the application paperwork.
11. Mrs Walker confirmed that the application had been made on behalf of the Applicant under HPC rule 103 on the advice of Frontline Fife. She confirmed that the Applicant had not raised the matter of the tenancy deposit being lodged in a tenancy deposit scheme with the Respondent at any time (before the Respondent received the paperwork from the Tribunal) because she did not think that the Applicant knew that it should have been lodged in such a scheme. She noted that he became aware of the requirement after being advised of it by Frontline Fife. The application was made to the Tribunal approximately 3½ to 4 weeks before the end of the tenancy but Mrs Walker did not know why the Applicant did not inform the Respondent of the application.
12. Mrs Walker confirmed that there had been arrears of rent at the beginning of the year and that the arrears (believed to be of only 1 month) were repaid over a number of months and that, as at the end of the tenancy, there were no arrears.
13. It was agreed by Mr Tait that there had been arrears but there were no arrears as at the end of the tenancy.
14. Mrs Walker noted that the arrears had arisen when the Applicant was ill and he had alleged in a communication to her that this illness was caused by damp in the Property.
15. The Respondent agreed that the Applicant had been ill but did not agree that it was to do with damp in the Property. She confirmed that a tradesperson had attended the Property and that it was concluded that the Applicant had kept the windows shut and had not had the heating on.
16. The Respondent confirmed that her previous tenant who had been in the Property for approximately 12 years had not complained of damp but she was aware that they had had the heating on. She also noted that no tenancy deposit had been taken from that previous tenant.
17. The Respondent confirmed that no other applications had been made to the Tribunal about this Property previously.
18. The Respondent confirmed that she had not sought professional advice in relation to letting the Property or the tenancy deposit but had paid the full tenancy deposit back within 2 days of the end of the tenancy.
19. The Respondent confirmed that she owned 2 properties which were rented out, the Property (in which her daughter was now living) and another one in Lochgelly which

she had bought around 2 years ago. She confirmed that no tenancy deposit had been taken in either case.

## **FINDINGS OF FACT**

20. It was agreed by the parties (and so accepted as fact) that:

- a. the tenancy commenced on 20 June 2022;
- b. the tenancy terminated on 28 July 2023;
- c. a deposit of £500 was paid by the Applicant to the Respondent on or around 20 June 2022 in cash;
- d. the deposit was repaid in full by the Respondent to the Applicant on or around 29 July 2023;
- e. there were no arrears of rent upon the termination of the tenancy; and
- f. the Applicant and the Respondent both continue to work for the same employer.

21. The application was made in time in terms of regulation 9 of the 2011 Regulations, it being agreed that the tenancy terminated on 28 July 2023 and the application having been made on 4 July 2023.

22. As admitted by the Respondent in written submissions provided on her behalf on 10 August 2023 and confirmed in the CMD, the tenancy deposit had not been lodged in an approved tenancy deposit scheme.

## **REASONS FOR DECISION**

23. The Respondent had failed to comply with her duties as landlord in terms of regulation 3 of the 2011 Regulations. Accordingly, the Tribunal was required to make an order in terms of regulation 10 of the 2011 Regulations of “an amount not exceeding three times the amount of the tenancy deposit” (so of between £1 and £1,500).

24. In determining what would be a “fair, proportionate and just sanction” in the circumstances of this particular case, the Tribunal was satisfied, on the balance of probabilities, that:

- a. The Property was one of two properties which the Respondent owned and leased out, one of which was now occupied by her daughter;
- b. Prior to the Applicant, the previous tenant had resided in the Property for a number of years and no tenancy deposit had been taken;

- c. Whilst the Applicant had been a landlord for a number of years, she was not what would generally be described as a “sophisticated investor” in rental property, it being noted by the Tribunal that this did not excuse non-compliance;
- d. The Respondent had not sought professional advice in granting the tenancy to the Applicant and was not aware of the 2011 Regulations – again, it being noted by the Tribunal that this did not excuse non-compliance;
- e. The Applicant had been in breach of regulation 3 of the 2011 Regulations (taking into account the initial 30 working day period permitted for lodging a deposit) for a period of approximately 12 months and the tenancy deposit was not protected in an approved scheme for that period;
- f. The Respondent knew that she had to repay the tenancy deposit and was proactive in repaying it, rather than having to be reminded or chased to do so by the Applicant;
- g. Whilst there was the potential for the Applicant to be prejudiced by the failure to lodge the tenancy deposit in an approved scheme, as a matter of fact he was not prejudiced and the tenancy deposit was promptly repaid within 1 to 2 days of the tenancy terminating; and
- h. The Applicant had not intentionally ignored or refused to comply with the 2011 Regulations, she had simply not been aware of them - again, it being noted that this did not excuse non-compliance;

## **DECISION**

25. The Tribunal decided that a fair, proportionate and just sanction in the circumstances of this particular case was for the Respondent to be ordered to pay the Applicant an amount of £500 (five hundred pounds sterling) as a result of the Respondent's failure to comply with her duties in regulation 3 of the 2011 Regulations. This amount was equivalent to the amount of the tenancy deposit (or 1 x £500).

## **Right of Appeal**

**In terms of Section 46 of the Tribunals (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.**

**Pamela Woodman**

*6 November 2023*

**Legal Member**

**Date**