



**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/23/3504**

**Re: 0/2, 18 Ingleby Drive, Glasgow G31 2PT ("the Property")**

**Parties:**

**James Cruden, Flat 2/2, 70 Eastwood Avenue, Glasgow G41 3NY ("Applicant")**

**Alan Huang, 2/1, 127 Finlay Drive, Glasgow G31 2SE ("Respondent")**

**Tribunal Members:**

**Joan Devine (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 £600.**

**Background**

1. The Applicant made an application in Form G ("Application") dated 25 September 2023 and lodged on 3 October 2023 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("Rules") stating that the Respondent had failed to timeously lodge a tenancy deposit in an appropriate scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("2011 Regulations"). The documents produced to the Tribunal by the Applicant were:
  - A tenancy agreement between the Applicant, the Respondent dated 28 October 2019 and which commenced on 2 November 2019.
  - Screenshot of website for Mydeposits Scotland stating they did not hold the Applicant's deposit for the Property.
  - Screenshot of website for Letting Protection Scotland stating they did not hold the Applicant's deposit for the Property.

- Screenshot of website for Safe Deposits Scotland stating they did not hold the Applicant's deposit for the Property.
  - Screenshot of a payment transfer of £860 on 4 November 2019.
  - Screenshot of a message dated 11 September which indicated the tenancy came to an end on 27 September 2023.
2. A copy of the Application and notification of a Case Management Discussion ("CMD") fixed for 7 December 2023 was given to the Respondent by Sheriff Officer on 30 October 2023. In advance of the CMD the Respondent lodged a written submission dated 16 November 2023.

### **Case Management Discussion ("CMD")**

3. A CMD took place on 7 December 2023 by conference call. Both the Applicant and the Respondent were in attendance.
4. The Tribunal summarised the terms of Regulations 3, 9 and 10 of the 2011 Regulations. The Tribunal noted that the tenancy commenced on 2 November 2019 and ended on 27 September 2023 and that a deposit of £400 was paid on 4 November 2019. The Parties confirmed that was agreed. Mr Cruden confirmed that the deposit was returned in full on 28 September 2023.
5. Mr Huang told the Tribunal that he had not been aware of the requirement to lodge a deposit in an approved scheme until after the tenancy came to an end. He said that he was now aware of the 2011 Regulations. He said that the Property is the only rental property that he owns. He said it is now vacant and being marketed for sale. He said that there may have been previous tenants in the Property but he could not recall.
6. Mr Cruden said he had not been aware of the 2011 Regulations until he consulted Shelter about the period of notice he had been given when the tenancy ended. He said they had highlighted the 2011 Regulations and suggested that compensation of 3 times the deposit would be appropriate as the deposit had been unprotected for a long period. As regards the amount of compensation, Mr Huang said he was content to hear what the Tribunal had to say about that.
7. The Tribunal expressed the view that it had sufficient information to proceed to make a decision without the need for a further Hearing. The Parties stated that they were content for the Tribunal to make a decision on the basis of the information presented.

## **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a tenancy agreement which commenced on 2 November 2019.
2. The tenancy agreement came to an end on 27 September 2023.
3. The Applicant paid to the Respondent a deposit of £400 on 4 November 2019.
4. The Application lodged on 3 October 2023 was timeous in terms of Regulation 9 of the 2011 Regulations.
5. The deposit was not paid to the administrator of an approved scheme in compliance with the 2011 Regulations.
6. The deposit was returned to the Applicant in full on 28 September 2023.

## **Relevant Legislation**

8. Regulation 3 of the 2011 Regulations provides *inter alia* :  
  
*"(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.."*
9. Regulation 9 of the 2011 Regulations provides:  
  
*"(i) 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.*  
  
*(ii) An Application under paragraph 1 must be made no later than three months after the tenancy has ended."*
10. Regulation 10 of the 2011 Regulations provides *inter alia* :  
  
*"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"*

### **Reasons for the Decision**

11. Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme administrator of an approved scheme within 30 working days of the beginning of the tenancy, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. The Tribunal was satisfied that the Respondent did not lodge the deposit with an approved scheme.

12. The amount to be awarded is a matter for the discretion of the Tribunal having regard the factual matrix of the case before it. The Tribunal considered the comments of Sheriff Ross in *Rollett v Mackie* UTS/AP/19/0020. At para 13 and 14 he considered the assessment of the level of penalty and said:

*"[13] In assessing the level of a penalty charge, the question is one of culpability, and the level of penalty requires to reflect the level of culpability. Examining the FtT's discussion of the facts, the first two features (purpose of Regulations; deprivation of protection) are present in every such case. The question is one of degree, and these two points cannot help on that question. The admission of failure tends to lessen fault: a denial would increase culpability. The diagnosis of cancer also tends to lessen culpability, as it affects intention. The finding that the breach was not intentional is therefore rational on the facts, and tends to lessen culpability.*

*[14] Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals. None of these aggravating factors is present."*

13. The Tribunal noted that the Respondent was not an experienced landlord, that he admitted that there had been a breach and that the deposit was returned in full at the end of the tenancy. The deposit had however been unprotected for almost 4 years. The explanation given for the failure to comply with the 2011 Regulations was lack of awareness of the 2011 Regulations. Whilst ignorance of the law is not an excuse for non-compliance, the Tribunal was of the view that there were no aggravating factors present in this case of the sort described in *Rollett v Mackie*.

14. Having regard to factors put forward by both Parties the Tribunal determined that the sanction should be £600 in the particular facts and circumstances of this case. This figure is 1.5 times the value of the deposit.

### **Decision**

The Tribunal granted an Order for payment of £600 in terms of Regulation 10(a) of the 2011 Regulations.

### **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.**

**Joan Devine  
Legal Member**

**Date: 7 December 2023**

