



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Regulations 3 and 10 of the Tenancy  
Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/23/3107**

**Re: Property at 26/4 Newtoft Street, Edinburgh, EH17 8RD (“the Property”)**

**Parties:**

**Mr Abdulgafaru Shodeinde, 3/1 Piershill Square East, Edinburgh, EH8 7BD (“the Applicant”)**

**Mr Daniel Greaves, 44 Roosevelt Road, Kirknewton, EH7 8AD (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be made.**

1. The Applicant lodged an application on the 5<sup>th</sup> September 2023 under Rule 103 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) seeking a sum under the Tenancy Deposit (Scotland) Regulations 2011.
2. Lodged with the application were:
  - a. Tenancy Agreement with a commencement date of 27<sup>th</sup> February 2019, with rent of £750 per month and a deposit of £750
  - b. Correspondence from the three deposit schemes confirming they had no record of the deposit being lodged
  - c. Bank statement showing payment of deposit
3. The papers were served on the Respondent by Sheriff Officers on 1<sup>st</sup> November 2023.

4. On 21<sup>st</sup> November 2023 the Respondent a lengthy submission to the Tribunal, with photographs, outlining the damage he alleged had been caused by the Applicant and his family to the property.
5. On 29<sup>th</sup> November 2023 the Applicant sent a submission to the Tribunal in response.

### **Case Management Discussion**

6. The Case Management Discussion ("CMD") took place by teleconference. The Applicant represented himself. The Respondent represented himself.
7. The Chairperson introduced everyone and explained the purpose of a CMD in terms of Rule 17.
8. The Applicant said that he had brought the Application because his deposit had not been placed in an approved scheme. He was seeking an order for payment.
9. The parties agreed that the tenancy began on 27<sup>th</sup> February 2019, the Applicant had paid a deposit of £750 and the tenancy was a private residential tenancy.
10. The papers showed that the Applicant had vacated the tenancy in August 2023 after receiving service of a Notice to Leave.
11. The Respondent confirmed that he had not lodged the deposit in an approved tenancy deposit scheme.
12. The Chairperson told the Respondent that as he had not lodged the deposit in an approved scheme his submissions regarding the state of the property were irrelevant. This application deals only with the failure to lodge the deposit. The Chairperson told the Respondent that she now had to determine how much he should pay by way of penalty.
13. The Respondent confirmed that he did not realise that there was a legal requirement to place tenancy deposits in to an approved scheme. He had owned the subject property since 2017. He had rented it out to someone else before renting it to the Applicant. He has three other rental properties in Scotland, and has been renting them out for the last eight years. He takes deposits from the tenants of those and has never lodged any of the deposits in an approved scheme. He does not use a letting agency. Before renting out properties he did some research and learned about the need for safety certificates for utilities, but did not know about deposit schemes. He gets his tenancy agreements from WH Smiths and the forms do not mention it. He did point out that he has always returned deposits in the past.
14. The Chairperson asked where the deposit in this case was held. The Respondent said that he had spent it on the repairs which were required.

## Findings In Fact

- i. The Applicant entered in to a Private Residential Tenancy agreement for the property on 27<sup>th</sup> February 2019;
- ii. The Applicant paid a deposit of £750 to the Respondent;
- iii. The Respondent did not pay the deposit in to an approved scheme;
- iv. The Applicant vacated the property in August 2023;
- v. The Respondent has four rental properties which he has been renting out for eight years;
- vi. The Respondent takes deposits from tenants for those properties;
- vii. The Respondent has not lodged any of those deposits in an approved scheme;
- viii. The Applicant's deposit was unprotected for four and a half years.

## Reasons For Decision

15. The Application has been brought under the Tenancy Deposit (Scotland) Regulations 2011, based on an alleged failure of the Respondents of their duties under Regulation 3, and seeking a payment in terms of Regulation 10.

16. Regulation 3 is 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.*

17. Regulation 10 is as follows:

*10. 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*

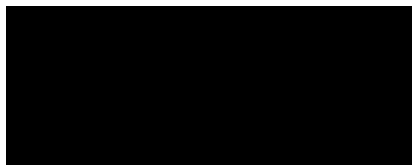
*(ii) provide the tenant with the information required under regulation 42.*

18. There was no question of credibility or reliability to be determined. The parties were agreed on the facts.
19. Regulation 3 imposes an obligation on a landlord who has received a tenancy deposit in connection with a relevant tenancy and the obligation is to place it in to an approved scheme within 30 working days of the beginning of the tenancy.
20. The Tribunal has discretion in deciding what the Respondent should be ordered to pay. Serial offenders, i.e. landlords with multiple properties who do not place deposits in schemes are at the upper end of the scale. Renting out a property is a commercial decision/running a business, and there are laws and regulations in place to protect parties who enter in to tenancy agreements. These must be complied with.
21. The reasons for the Regulations are to protect the tenant's deposit, as the money belongs to the tenant, and also to provide a fair and impartial mechanism for adjudicating on whether a deposit should be returned to a tenant or some or all be retained by the landlord. The Tribunal has power to award a sum equivalent to up to three times the amount of the deposit.
22. The Tribunal considered this case to be serious. The Respondent confirmed that he rents out four properties and did not know of his obligation to place deposits in to an approved scheme, citing the fact that WH Smith do not mention it on their pro forma tenancy agreement. He would do well to take proper advice to ensure he is complying with all of the obligations incumbent on a landlord.

23. The Respondent did not return the deposit at the end of the tenancy and says that he used it to make repairs, which he had no business to be doing without a formal adjudication having been carried out.
24. The tenancy ran from February 2019 to August 2023, a period of four and half years, during which the deposit was not protected.
25. Taking all of the foregoing circumstances in to account the Tribunal decided to order the Respondent to pay to the Applicant the sum £1500.

### **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.**



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**Legal Member/Chair**

**11<sup>th</sup> December 2023**

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**Date**