



**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/23/4215**

**Re: Property at 13 Old Craighall, Musselburgh, EH21 8SE (“the Property”)**

**Parties:**

**Mr Mario McGee, 16 Old Craighall, Musselburgh, EH21 8SE (“the Applicant”)**

**Mr James Sampson, Brigadoon, Pyatshaw, Lauder, Berwickshire, TD2 6SH  
 (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was in breach of his obligations in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) regulations 2011 and that the Applicant must pay the Respondent the sum of £1300.00 plus interest at the rate of 5% per annum from the date of the decision until payment.**

**Background**

1. By application dated 23 November 2023 the Applicant applied to the Tribunal for a decision under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicant submitted copies of the Applicant’s tenancy agreements, correspondence from Tenancy Deposit Schemes, Notices to Leave, Deposit Protection Certificate, and copy correspondence in support of the application.
2. By Notice of Acceptance dated 268 November 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned (“CMD”).

3. Intimation of a Case Management Discussion was served on the Respondent by Sheriff Officers on 30 November 2023.
4. By email dated 30 November 2023 the Respondent submitted written representations to the Tribunal.
5. By email dated 17 January 2024 the Applicant submitted further written representations to the Tribunal.

### **The Case Management Discussion**

6. A CMD was held by teleconference on 24 January 2024. The Applicant attended in person. The Respondent also attended in person.
7. It was agreed that the tenancy ended on 24 August 2023 and that the Application was made to the Tribunal on 23 November 2023 and that the application was therefore timeous in terms of Regulation 9 of the 2011 Regulations.
8. It was agreed that the parties entered into a Private Residential Tenancy that commenced on 1 September 2018. It was also agreed that the Applicant had paid the Respondent a deposit of £650.00 at the commencement of the tenancy and that the deposit had been retained in an account by the Respondent and not placed in an approved Tenancy Deposit Scheme until 3 May 2023.
9. The Tribunal asked the Respondent to explain how Clause 11 of the Tenancy Agreement had been amended from the Scottish Government Model agreement to remove reference to the deposit being placed in an approved Tenancy Deposit Scheme and instead retained by the Landlord. The Respondent said that the agreement had been downloaded from an online template. He also said that he could not remember if it had been himself or his wife who had prepared the document.
10. The Respondent went on to say that he had not previously rented out the property although friends from abroad had stayed in the property. The Respondent also said that neither he nor his wife owned any other rental properties.
11. The Respondent said that at the time of renting out the property to the Applicant his wife Mrs Christina Samson had dealt with the administration. The Respondent went on to say that around this time his wife had been working full time and he had been looking after the children. He said his father had then had a stroke and then there had been Covid so dealing with the deposit had not been a priority. The Respondent then went on to say that in fact he had been unaware of the regulations requiring tenant's deposits to be secured and later said that he had also been unaware of the requirement to be registered as a landlord. He said that as a first-time landlord he could not have known about

every rule. He also said that it was possible that Mrs Samson had known about the regulations.

12. The Tribunal referred the Respondent to his written representations and queried what relevance any issues the Respondent might have with regards to the Applicant's behaviour during the tenancy, the condition of the property at the end of the tenancy or the work carried out by the Respondent during the tenancy had with regards to any sanction that the Tribunal might impose in respect of a breach of Regulation 3 given that the Respondent had other remedies available to him if in dispute with the Applicant. After some discussion the Respondent accepted that his submissions in this regard were not relevant.
13. The Tribunal queried with the Applicant if he stood by the submissions he had made in his email of 17 January that the Respondent had previously let the property and had retained a deposit. The Applicant said that he had been told by a neighbour that her son Paul Carrigan had rented the property for some months and that the Respondent had tried to retain some of the deposit for failing to maintain the garden. He also said that mail for John McLaughlin and Pamela Chan had been delivered to the property.
14. The Respondent maintained that he had not rented the property to Mr Carrigan or to the other people mentioned and had not taken or retained any deposits previously.
15. The Tribunal explained to the parties that if facts were disputed the CMD would be adjourned to a hearing where evidence would be led from witnesses. Both parties expressed a desire to bring matters to a conclusion and the Applicant said he did not know if any witnesses would be available to speak to his submissions of 17 January and he was therefore prepared to accept that the Respondent was a first-time landlord. But that should not excuse his failure to comply with the rules.
16. Both parties confirmed they were content for the Tribunal to make a final decision without continuing to a hearing.

### **Findings in Fact**

17. The parties entered into a Private Residential tenancy that first commenced on 1 September 2018.
18. The Applicant paid a deposit of £650.00 to the Respondent at the commencement of the tenancy.
19. The Respondent lodged the deposit with Safe Deposits Scotland on 3 May 2023.
20. The deposit was lodged 4 years and 8 months after the commencement of the tenancy.

21. The Respondent does not own any other rental properties.
22. The Respondent has not previously been sanctioned for the late lodging of a tenant's deposit.
23. The Scottish Government Model Private Residential Tenancy Agreement issued to the Applicant by the Respondent was amended to remove references to the Applicant's deposit being placed in an approved tenancy deposit scheme.
24. In an email dated 20 August 2018 the Applicant queried with the Respondent's wife if the deposit was being placed in a deposit scheme.
25. By email dated 20 August 2018 the Respondent's wife confirmed she was retaining the deposit in an account.
26. The Applicant's tenancy ended on 24 August 2023.

### **Reasons for Decision**

27. The Respondent failed to comply with regulation 3.(1)(a) of the 2011 regulations in that he failed to lodge the Applicant's deposit with Safe Deposits Scotland within 30 working days of the commencement of the tenancy. The deposit was lodged 4 years and 8 months late. The application was made timeously.
28. In terms of regulation 10 the Tribunal, if satisfied that the Respondent did not comply with any duty in Regulation 3, must order him to pay the Applicant an amount not exceeding three times the deposit. It is well settled that the maximum award should be reserved for the most serious cases where a tenant's deposit has been unsecured for a long period and the landlord has deliberately ignored the regulations. The Applicant's deposit was unsecured for a very long time. The Model Private Residential tenancy agreement had been deliberately altered to remove reference to the deposit being secured in an approved tenancy deposit scheme and although the Respondent could not recall whether it was himself or his wife who had prepared the document it was apparent from the emails of 20 August 2018 that the Respondent or his wife intended to retain the deposit and not place it in an approved scheme. The Tribunal is prepared to accept that the Respondent was an inexperienced landlord and may have had personal family issues ongoing at the time. However, ignorance of the law is not an excuse and failure to lodge a tenant's deposit over such a long period of time is in the Tribunal's view a serious breach of the regulations and merits a sanction at the higher end of the scale.
29. The Tribunal has not given any weight to the submissions made by the Applicant having had previous tenants nor has the Tribunal considered it relevant that there were issues between the parties as regards the condition of the property at the end of the tenancy.

30. Taking into account the long time the deposit was unsecured but also taking account of the fact that the Respondent was an inexperienced landlord the Tribunal considers that a fair, just and proportionate sanction in the circumstances is to award the Applicant a sum of £1300.00 being the equivalent of twice the deposit.

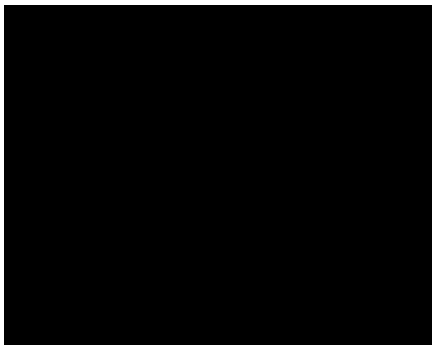
31. The Applicant has requested that the Tribunal add interest on the sum awarded at the judicial rate for the period that the deposit was unsecured. That is not competent. However, in terms of Rule 41A of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 the Tribunal can at its discretion award interest on any sum awarded to the Applicant from the date of the decision until payment. In the circumstances the Tribunal is prepared to award interest at the rate of 5% per annum.

### **Decision**

32. The Respondent shall pay the Applicant the sum of £1300.00 with interest at the rate of 5% per annum from the date of the decision until payment.

### **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**

**24 January 2024**  
**Date**