

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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

**Chamber Ref: FTS/HPC/PR/23/4091**

**Re: Property at 19 Strathearn House, Auchterarder, PH3 1JL (“the Property”)**

**Parties:**

**Miss Kerrie Nevin, 46 Benton Road, Auchterarder, PH3 1FQ (“the Applicant”)**

**Forthmark Limited, 10 Strathearn House, Auchterarder, PH3 1JL (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order be granted against the respondent for one thousand pounds (£1,000)**

**Introduction**

This is an application under Rule 103 and Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Service of the application and intimation of the Case Management Discussion (CMD) was effected upon the respondent by Sheriff Officers on 16 January 2024. Both parties submitted written representations thereafter and the tribunal issued a direction to regulate the procedure.

The CMD took place by teleconference on 1 March 2024 at 2.00 pm. The applicant joined the hearing and represented her own interests. The respondent was represented by Mr William Fraser who is the sole director of Forthmark Limited.

## Findings and Reasons

In accordance with applying the overriding objective in Rule 2 of the First-tier for Scotland Housing and Property Chamber Rules of Procedure 2017 the tribunal is obliged to deal with the proceedings in manner proportionate to the complexity of the issues and to avoid delay. There would have no merit in delaying determination of the application. The tribunal had refused to convert the CMD to a face to face hearing at the request of the respondent as despite his health problems which are accepted, it would have been a greater barrier and caused undue delay to the resolution of the application to do so. The tribunal was satisfied that both parties could fully and fairly participate. There was no dispute about the material fact that the deposit was not paid into a scheme in accordance with the regulations and no evidential hearing was required.

The property is 19 Strathearn House, Auchterarder PH3 1JL. The applicant is Miss Kerrie Nevin who is the former tenant. The respondent is Forthmark Limited who is the former landlord.

The parties entered into a 'private residential tenancy' for the purposes of the Private Housing (Tenancies) (Scotland) Act 2016. The tenancy commenced on 7 April 2023. The rent stipulated was £2,000 per calendar month. The applicant paid £2,000 by way of deposit. There was another named tenant Shaun Rosling and the applicant brings the application on behalf of both of them.

The property is owned by the registered landlord, Jean Marie Graham Fraser. She is the wife of Mr William Fraser the director of the landlord company.

The applicant vacated the property on 11 September 2023. In advance of the tenancy ending, the applicant requested confirmation as to the security of the deposit paid. Discussions took place between the parties about what to do with the deposit once the applicant identified it was not protected. At one point she stated that she did not wish the money paid into a scheme. It ultimately was, and Letting Protection Service Scotland confirmed that on 26 July 2023 that the £2,000 deposit was paid in on that date. The deposit was paid around 3 months later than required under and in terms of the Regulations.

Mr Fraser confirmed at the hearing that he was now aware that the regulations had been breached. He had earlier apologised within his written representations. He habitually lets out properties on a short term holiday let basis only and is unfamiliar with the regulations around tenancy deposits

Though there was a delay in the applicant receiving return of the deposit she has suffered no financial loss. She has sustained a degree of inconvenience and anxiety.

The respondent did not comply timeously with the requirements of the 2011 Regulations. The duties of landlords are contained within Regulation 3. This requires the landlord who has received the tenancy deposit in connection with the relevant tenancy to pay the deposit to a relevant scheme administrator from an approved scheme within 30 working days of the beginning of the tenancy. The respondent failed to do this.

Regulation 10 requires the tribunal to make an Order against the respondent to pay to the applicant an amount not exceeding three times the amount of the tenancy deposit. There is no discretion not to impose a penalty. This is a strict liability jurisdiction.

The tribunal considered all relevant circumstances prior to making any Order under Regulation 10. The public require to have confidence that residential landlords are operating fairly and that their deposits are secured in accordance with the law in force in Scotland.

In all the circumstances of the parties as set out, the tribunal ordered that the respondent pay to the applicant one half of the amount of the tenancy deposit paid ie a total of £1,000. This is at the lowest end of the scale and fair and proportionate in all of the circumstances as the applicant has suffered no loss and the deposit was paid into an approved scheme albeit late.

There is regrettably considerable friction between the parties. The tribunal has not taken into account the personal criticisms made by each party against the other.

### **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**

**1 March 2024**

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**Date**