



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit  
Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/20/0480**

**Re: Property at 2 Small Holdings, Sauchenford, Stirling, FK7 8AP (“the  
Property”)**

**Parties:**

**Miss Cara Craig, 2 Small Holdings, Sauchenford, Stirling, FK7 8AP (“the  
Applicant”)**

**Mr Russell Gordon, Mrs Lesley Gordon, 92 High Blantyre Rd, Hamilton,  
Glasgow, ML3 9HS; Glenside Farm, Plean, Stirling, FK7 8BA (“the  
Respondents”)**

**Tribunal Members:**

**Helen Forbes (Legal Member) and Elizabeth Currie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that an order for payment should be granted in favour of  
the Applicant in the sum of £40.**

**Background**

1. By application dated 9<sup>th</sup> December 2019, the Applicant is seeking an order in terms of Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”). Parties entered into a tenancy agreement in respect of the Property that commenced on 1<sup>st</sup> February 2016. The Applicant paid a deposit of £1200 before the commencement of the tenancy. The Applicant alleges that the Respondent has failed to place her tenancy deposit in an approved tenancy deposit scheme and has failed to provide the information required by Regulation 42. The Applicant is seeking an order in the sum of £3600.

2. By email dated 10<sup>th</sup> March 2020, the Respondent, Russell Gordon, submitted a copy of a notification from Letting Protection Service (“LPS”) indicating that the tenancy deposit was lodged with them on 1<sup>st</sup> February 2016, the start date of the tenancy.
3. A Case Management Discussion (“CMD”) took place on 11<sup>th</sup> March 2020. The Applicant indicated that she now accepted that the deposit had been lodged with an approved deposit scheme; however, she had not been notified by the Respondent in terms of the Regulations, and she had not received the additional information required by Regulation 42. She said she wished to continue with the application, as the failure to provide the information in Regulation 42 is still a breach of Regulation 3.
4. On 5<sup>th</sup> October 2020, written representations and productions were received from the Respondent.
5. By email dated 9<sup>th</sup> October 2020, the Respondent, Russell Gordon, submitted an email from LPS dated 5<sup>th</sup> October 2020 that indicated that LPS had emailed the Applicant to provide confirmation of the lodging of the deposit on 6<sup>th</sup> February 2016.
6. On 10<sup>th</sup> October 2020, a hearing set down for 13<sup>th</sup> October 2020 was postponed following a request from the Applicant regarding ill-health.
7. By email dated 19<sup>th</sup> October 2020, Mrs Lesley Gordon requested that she be added as a party to proceedings in terms of Rule 32. The Tribunal agreed to add Mrs Gordon as a party, by order dated 19<sup>th</sup> October 2020.
8. At 03.23 on 9<sup>th</sup> November 2020, the Applicant informed the Tribunal by email that she would not be in attendance due to ill-health. Written representations and productions were lodged in respect of a conjoined case, FTS/HPC/CV/19/2282. The Applicant did not make any representations in respect of this case.

## **The Hearing**

9. A hearing took place by teleconference on 9<sup>th</sup> November 2020. The Respondents were in attendance. The Applicant was not in attendance.
10. The Tribunal considered the terms of Rule 29 of the Rules. The Tribunal determined that the Applicant had been given reasonable notice of the time and date of the hearing. The Tribunal determined that the requirements of Rule 24(1) had been satisfied and that it was appropriate to proceed with the application in the absence of the Applicant, upon the representations of the Respondents and all the material before it.

## **Representations by the Respondents**

11. Referring to the written representations previously lodged, the Respondents said that they had told the Applicant verbally that the deposit had been lodged. At that time, the Applicant said she had received an email from LPS. This was within the timescale of 30 days required by Regulation 42. The Respondents accepted that they had not formally notified the Applicant of all the information required by Regulation 42. It was their position that LPS had provided much of the information required and that further information required was referred to in the tenancy agreement. They were aware of their responsibility to lodge the deposit, and they had done so properly and timeously. They had attended at the Property after the tenancy commenced in an attempt to ensure that everything was satisfactory.
12. In response to questions from the Tribunal regarding the level of compensation payable should an award be made, the Respondents were candid in accepting that a breach had occurred, but, in mitigation, they had lodged the deposit timeously and notified the Applicant of this. It was a genuine misunderstanding and there was no ill-will involved. It was their position that any award made should be a minimal amount.

## **Findings in fact**

- 13.
- (i) Russel Gordon and the Applicant entered into an agreement purporting to be a short assured tenancy agreement commencing on 1<sup>st</sup> February 2016 at a monthly rent of £1200. The tenancy ended on 28<sup>th</sup> October 2020.
  - (ii) A tenancy deposit of £1200 was paid to the Respondent by the Applicant at the start of the tenancy.
  - (iii) The deposit was lodged with an approved tenancy deposit scheme on 1<sup>st</sup> February 2016.
  - (iv) The Respondent did not provide in full the information required in Regulation 42.
  - (v) The Respondent has breached Regulation 3 by failing to provide the information required in Regulation 42.

## **Reasons for Decision**

14. The Tribunal took into account that the deposit was lodged with an approved tenancy deposit scheme within 30 days of the commencement of the tenancy as required by Regulation 3. The deposit was, therefore, protected throughout the duration of the tenancy.

15. The Tribunal considered that this was a genuine misunderstanding by the Respondents and that there was no malice intended in failing to provide the information required.
16. The Regulations were put in place to ensure compliance with the tenancy deposit scheme, and to provide the benefit of dispute resolution for parties. In this case, parties now have the benefit of dispute resolution. The Tribunal considers that its discretion in making an award requires to be exercised in the manner set out in the case *Jenson v Fappiano (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015* by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case. The Tribunal must consider the facts of each case appropriately.
17. Whilst the Applicant sought the maximum of three times the deposit value to be awarded, the Tribunal noted that this was prior to her concession that the tenancy deposit was, in fact, lodged timeously. The Tribunal took guidance from the decision of the Upper Tribunal UTS/AP/19/0020 which states: '*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.*'
18. On the information before it, the Tribunal did not consider this to be a case at the most serious end of the scale. Indeed, it is a case at the very lower end of the scale. The Tribunal took into account that the Respondents did not deny their fault. There were no actual losses to the Applicant, no fraudulent intention and no deliberate or reckless failure to observe responsibilities. The deposit was protected throughout the tenancy.
19. Taking all the circumstances into account, the Tribunal decided it would be fair and just to award a sum of £40 to the Applicant.

## Decision

20. An order for payment is granted in favour of the Applicant in the sum of £40.

## 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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**Helen Forbes**  
**Legal Member/Chair**

**9<sup>th</sup> November 2020**  
**Date**