

**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 Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.**

**Chamber Ref: FTS/HPC/PR/18/0201**

**Re: Property at 337 Fulton Street, Glasgow, G13 2TA ("the Property")**

**Parties:**

**Miss Elizabeth Murray, 0/1 40 Herma Street, Glasgow, G23 5AR ("the Applicant")**

**Mr John Nash, 1/1 3 Orchard Street, Paisley, PA1 1UY ("the Respondent")**

**Tribunal Members:**

**Lesley Ward (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") being satisfied that the Respondent as landlord of the property at 337 Fulton Street Glasgow G13 2TA, did not comply with any duty in Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, makes an order for the Respondent to pay to the Applicant the sum of twelve hundred pounds (£1200).**

This is an application in terms of Rule 103 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 "the rules" for an order for payment where a landlord has not paid the deposit into an approved scheme in terms of Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, "the regulations". The application was made by Miss Elizabeth Murray "the Applicant" on the 24 January 2018. The Applicant's solicitor is Mrs Kirsti Nelson on Brown and Company Legal LLP.

The hearing today was a case management discussion. The Applicant attended and was represented by Mrs Nelson solicitor. Mr Nash "the Respondent" did not attend and was not represented.

The tribunal had before it the following copy documents:-

1. Application dated 24 January 2018.
2. Copy lease between the Applicant, Mr Hugh Conway as tenants and Mr Nash as landlord dated 3 July 2012.
3. Copy text messages between the Applicant and Respondent dated 25 October 2017 and 31 October 2017.
4. Copy letter from My Deposits Scotland dated 9 November 2017.
5. Copy letter from Safe Deposits Scotland dated 29 November 2017.
6. Copy letter from the Letting Protection Service dated 3 November 2017.
7. Letter to the Tribunal from Brown and company dated 2 February 2018.
8. Execution of service by sheriff officers to the Respondent dated 28 February 2018.

The tribunal had sight of the execution of service and was satisfied that the Respondent had received sufficient notice of the case management discussion in terms of Rule 9.

#### **Case management discussion**

The tribunal heard oral evidence from the Applicant in connection with the deposit paid to the Respondent. The tribunal noted that the application stated that the deposit was £495 but the lease between the parties referred to a deposit of £350. The Applicant's evidence was that she entered into a lease with the Respondent in December 2011 and paid a deposit of £495 in cash. She was given a written receipt for this sum. Her evidence was that she was not given any notification that the money was placed in a deposit scheme and she was not given any other details required by Regulation 42 such as a statement that her landlord Mr Nash had applied to the local authority to be placed on the landlords register. The Applicant is unable to find the original lease or the receipt.

The Applicant's evidence was that she paid her rent and maintained the property without issue until 2012 when Mr Conway moved into the property. A new lease was required and her evidence was that she did not notice at the time that the new lease referred to a deposit of £350. Her evidence was that the original deposit of £495 was kept by the Respondent and no further deposit was paid. The Applicant's evidence was that she continued to look after the property and the garden until she moved out on 31 October 2017. The deposit was not returned to her despite her request for the return of the deposit. The Applicant's evidence was that she received no further communication from the Respondent. He has not contacted her regarding any deductions from the deposit. The Applicant's evidence was that she left the property in a good condition and no deductions should be due to the Respondent.

The Applicant's evidence was that the Respondent previously lived in the property and it is her understanding that he does not use an agent and he is unlikely to have any other rental properties.

The tribunal noted that the application also seeks an order in terms of Regulation 10(b) despite the fact that the tenancy agreement has come to an end. Mrs Nelson was unable to offer any legal submission on this point.

### **Findings in fact**

The tribunal is satisfied that the Applicant paid a deposit of £495 to the Respondent around December 2011.

The tribunal is satisfied that the Applicant rented the property at 337 Fulton Street Glasgow G13 2TA from the Respondent from December 2011 until 31 October 2017.

The tribunal is satisfied that the deposit was not paid in to a recognised deposit scheme.

The tribunal is satisfied that the Respondent did not comply with any duty in Regulation 3.

### **Reasons**

The tribunal is satisfied that the Respondent has received notice of the proceedings. The tribunal is satisfied that there is sufficient information before it today to make a decision and that the procedure has been fair.

The tribunal heard detailed oral evidence from the Applicant. The tribunal found the Applicant's evidence to be credible and reliable and the tribunal accepted it in full.

The tribunal is satisfied that a breach of Regulation 3 has occurred in that the Respondent has failed to comply with any duty in terms of Regulation 3. A sanction must therefore be made in terms of Regulation 10(a). The tribunal is not minded to make an order in terms of Regulation 10(b) as the tenancy has come to an end.

The tribunal reviewed all of the recent cases regarding tenancy deposit schemes and noted that in the case of Kirk-v-Singh, the judgment of Sheriff Jamieson from February 2015, the Sheriff states that the sanction should be :-

*Fair, proportionate and just, having regard to the seriousness of the non-compliance.*

The tribunal noted the submissions of the Applicant's solicitor that this is a serious breach with no mitigating factors and this is exactly the type of situation the Regulations are designed to prevent. She invited the tribunal to impose a sanction of three times the deposit. The tribunal decided to impose a sanction of £1200 as being fair proportionate and just in all of the circumstances. The tribunal considered the breach to be a serious one but given the Respondent appears to be the landlord of one property and given the deposit was paid a short time after the Regulations came

into force, the tribunal considered that a penalty of £1200 if fair proportionate and just in all of the circumstances.

### **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.**

L Ward

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**Lesley Ward Legal Member/Chair**

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**Date 3 April 2018**