

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

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**Decision with Statement of Reasons for the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Regulation 10 of The Tenancy Deposit  
Scheme Regulations 2011 (“the Regulations”)**

**Chamber Ref: FTS/HPC/PR/18/1177**

**Re: Property at 1/2 31 Barrington Drive, Glasgow, G4 9DS (“the Property”)**

**Parties:**

**Mr Conal Brosnan, 3 Haldane Avenue, Stirling, FK9 4TA (“the Applicant”)**

**Lets Direct (South) Ltd, 605 Cathcart Road, Glasgow, G42 8AD (“the  
Respondent”)**

**Tribunal Members:**

**Andrew Cowan (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the Respondent did not comply with the duties in  
relation to a Tenancy Deposit (as required by Regulation 3 of the Regulations)  
and ordered the Respondent to pay the Applicant the sum of Three Thousand  
Three Hundred and Twenty Five pounds (£3325)**

**Background**

This was a Case Management discussion to consider an application under Rule 103 of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Rules of Procedure) Amendment Regulations 2017. The application is in terms of Regulation 9 (Court Orders) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”). In terms of the application the Applicant seeks an order for the Respondent to pay to the Applicant an amount of three times the amount of the Tenancy Deposit.

The Tribunal intimated the application to the parties by letter dated 9<sup>th</sup> July 2018 and advised them of the date, time and place of a Case Management Discussion which had been fixed for 9<sup>th</sup> August 2018.

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In that letter, the parties were advised that the Tribunal could make a decision at the Case Management Discussion on the application if the Tribunal had sufficient information and considered the procedure to have been fair.

### **The Case Management Discussion**

The Applicant attended the Case Management Discussion.

The Respondent did not attend the Case Management Discussion. The Respondent did not lodge any written representations in advance of the Case Management Discussion.

The Case Management Discussion proceeded in the absence of the Respondent.

The Applicant explained that he was one of four joint Tenants who had leased the property at Flat 1/2, 31 Barrington Drive, Glasgow, G4 9DS. The Tenants had leased the property in terms of the Lease dated 8<sup>th</sup> August 2017.

The Landlord identified in the Lease was the Respondent to this application, Messrs Lets Direct (South Limited).

The Applicant had lodged with the Tribunal a copy of a document which was entitled "Assured Lease Agreement" between the Tenant and the Landlord.

The Applicant explained that a deposit was paid by the joint Tenants in the sum of £1900. He explained that the Deposit was paid prior to the Tenants taking entry to the property on 8<sup>th</sup> August 2017.

The Applicant explained that the Respondent had failed to comply with the Regulations in that the Respondent had failed to pay the deposit to the scheme administrator of an approved scheme in terms of Regulation 3 of the Regulations. Further the Landlord had failed to provide the joint tenants with the information required under Regulation 42. The Applicant explained that the Respondent had lodged the deposit with an approved scheme on 17 April 2018. This was over seven months after the date by which the Respondent should have lodge the deposit with an approved scheme.

The Applicant explained that the tenancy had terminated on 8<sup>th</sup> August 2018. All tenants had now vacated the property. . The Tribunal are satisfied that the application to the Tribunal has been made

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no later than three months after the tenancy has ended as required by Regulation 9 (2) of the Regulations.

On the basis of the evidence given by the Applicant at the Case Management Hearing (and in the absence of any contrary evidence from the Respondent) the Tribunal were satisfied that the Respondent has failed to comply with the terms of Regulation 3 of the Regulations in that they did not lodge the deposit with an approved scheme for a period of over seven months. It is therefore appropriate for the Tribunal to consider granting an order in terms of Regulation 10 of the Regulations

### **Findings in Fact**

1. The Applicant and other joint Tenants entered into a Lease with the Respondent whereby the Applicant leased the property Flat 1/2, 31 Barrington Drive, Glasgow from the Respondent by virtue of a Tenancy Agreement dated 8 August 2017.
2. The rent due in terms of that Tenancy Agreement was £1800 per calendar month.
3. The deposit paid by the Applicant and the other joint Tenants to the Respondent was £1900.
4. The tenancy continued from 8 August 2017 for a period of 12 months. The tenancy terminated on 8 August 2018.
5. The Respondent failed to lodge the deposit paid by the Tenants with an approved scheme within 30 working days of the beginning of the tenancy. The Respondent did lodge the Tenant's deposit with an approved scheme by 17 April 2018. The Respondent failed to provide the Tenants with the information required under Regulation 42 of the Regulations.
6. The Deposit of £1900 has not yet been repaid to the Applicant (and the other joint Tenants) by the approved scheme. The Applicant is now seeking return of the deposit from the approved scheme and he considers that there are reasonable prospects of recovery of the full deposit.

### **Reasons**

1. The Tribunal found that the Respondent has failed to comply with the duty set out in Regulation 3(1)(a) of the 2011 Regulations by failing to place the deposit in an approved

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scheme within 30 days of the beginning of the tenancy. The Tribunal further found that the Respondent had failed to comply with the duty set out in Regulations 3(1)(b) of the 2011 Regulations to provide the Tenants at the property with the information required under Regulation 42 of the Regulations.

2. In terms of Regulation 10 of the 2011 Regulations the Tribunal is obliged to make an order that the Respondent pay the Applicant an amount not exceeding three times the amount of the tenancy deposit.
3. The Tribunal noted the Respondent has failed to provide any reasons to the Tribunal as to their failure to lodge the deposit with an approved scheme until 17 April 2018.
4. In assessing the level of sanction the function of the Tribunal is to impose a fair, proportionate and just sanction in the circumstances of the case having regard to the purposes of the Regulations and the gravity of the breach. For the Tribunal, important in assessing the sanction is the fact that the Respondent did lodge the deposit with an approved scheme (albeit over seven months late). In addition the Applicant expects to receive all (or part) of their deposit returned from the approved scheme at the end of the tenancy. The Respondent's failure to lodge the deposit subsisted for seven of the twelve months of the lease. The maximum sanction the Tribunal can grant is three times the amount of the tenancy deposit (£5700). The Respondent's breach subsisted for 7/12ths of the total lease period. The Tribunal consider it to be reasonable to restrict the maximum sanction to 7/12ths. Accordingly the Tribunal consider it reasonable to grant an order that the Respondent should pay the Applicant the sum of £3325

### **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**

**Date**

9/8/18