



**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/20/0531**

**Re: Property at Flat 2/1, 37 Henderson Street, Glasgow, G20 6HP (“the  
Property”)**

**Parties:**

**Miss Magdolna Nadori, Sub Basement, 20 Cecil Street, Glasgow, G12 8RH  
 (“the Applicant”)**

**Mr Michael Caldwell, 46 Findhorn Place, Troon, KA10 7DJ (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that an award in the amount of £1650, equating to three  
times the amount of the deposit paid, should be made against the Respondent,  
and that he should be ordered to lodge the deposit of £550, which he still held,  
in to an approved scheme, in terms of Rule 10(b)(i) of The Tenancy Deposit  
Schemes (Scotland) Regulations 2011.**

**Background**

On 13<sup>th</sup> February 2020 the Applicant lodged an Application under Rule 103 of The  
First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure  
2017 (“the Rules”), alleging that the Respondent had failed to comply with  
Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 and  
seeking a payment in the amount of £1650, representing a sum equal to three times  
the deposit paid.

Lodged with the Application were:

1. Copy Tenancy Agreement
2. Transcript of What's App messages between the parties

On 18<sup>th</sup> August 2020 the Respondent lodged a written submission, in which he admitted that he had not lodged the deposit in an appropriate scheme.

### **Case Management Discussion**

A Case Management Discussion ("CMD") took place by teleconference on 19<sup>th</sup> August 2020. The Respondent dialled in. The Applicant did not join. The Chairperson waited for some time, and also asked that the Applicant be contacted. The Clerk was not able to contact her.

The Chairperson decided to adjourn the CMD to give the Applicant the opportunity to attend.

### **Continued Case Management Discussion**

Both parties dialled in to the CMD, which took place by teleconference on 2<sup>nd</sup> October 2020. The Chairperson introduced everyone, outlined how the proceedings would be conducted and explained the purposes of a CMD in terms of Rule 17. Both parties confirmed that they understood.

The Chairperson elicited agreement from both parties that there had been a tenancy, that it had begun on 6<sup>th</sup> October 2017, and that a deposit had been paid of £550 and that this deposit had not been returned to the Applicant.

The Respondent confirmed the terms of his written submission of 18<sup>th</sup> August 2020, in that he accepted that he had not paid the deposit in to an approved scheme.

The Chairperson explained that the Applicant didn't have to do anything further to establish her case, and that it was for the Respondent to put forward information in mitigation.

The Chairperson asked the Respondent to confirm why he had not placed the deposit in a scheme. He said that he had employed a firm of accountants to deal with his financial affairs as he was self-employed, and they had not placed the deposit in a scheme. He said that they are no longer his accountants. He was reluctant to give their name. He confirmed that he had one rental property, he had owned it for about 22 years and had been letting it out for 12 years. In that time he thought he had had around 4 different tenants. He hadn't taken deposits from all of them. He had not placed any deposits in to an approved scheme as he was not aware of the requirement to do so, and he took full responsibility for that.

The Chairperson asked him to confirm why he had not returned the deposit to the Applicant when she vacated the property. He said that there was no reason for not

returning it, there was no damage or rent arrears, but that he had been advised by his solicitor that he should await the outcome of this CMD before returning it.

The Respondent confirmed that the property had not been let during lockdown, but that a tenant had moved in in the last week, he had taken a deposit and he would put it in to an approved scheme within the 30 day period.

The Chairperson asked the Applicant if she had anything else to say before a decision was made. The Applicant said that she had found out that the Respondent had done this before and had had tribunal proceedings raised against him. The Chairperson asked the Respondent to clarify. He was evasive and said that he hadn't been at a Tribunal, and didn't know much about it.

The Chairperson adjourned. During the adjournment the Chairperson checked the Scottish Landlord Register, and could find no entry for their being a registered landlord for the property. The Chairperson also found on the Tribunal's website a decision under reference number FTS/HPC/PR/17/0527. This was a decision of the Tribunal, made on 16<sup>th</sup> February 2018, concerning the same Respondent and the same property. In that case the Tribunal was shown a course of emails in which the Respondent had told the Applicant in that case that his accountant had lodged the deposit in an approved scheme, and that it would be returned in four separate payments. The Tribunal issued a Direction to the Respondent ordering him to provide evidence of the deposit being placed in a scheme. The Respondent replied confirming that he had not actually placed the deposit in an approved scheme at all. At the time of the CMD in that case the Respondent had only repaid £100 of the deposit and still held the remaining £450. Neither party attended the CMD, and it was dealt with on the basis of the information before the Tribunal. The Chairperson held the breach to be at the top end of the scale and awarded three times the amount of the deposit to the Applicant.

The Chairperson in the current case reconvened the CMD. She asked the Respondent to confirm that he was a registered landlord. He said that he thought that he was, but that it might be his wife. He said that his wife owned the property and that he managed it for her. This had never previously been mentioned, nor had it been mentioned in the previous case. The Respondent confirmed that he was aware of the obligation to be a registered landlord.

The Chairperson told the Respondent of what she had discovered in reading the decision in the previous case. The Respondent continued to be evasive, but eventually conceded that he was still paying up the award that had been made.

The Chairperson asked the Respondent, why, given the terms of the previous decision issued in February 2018, he had still failed to lodge the deposit in a scheme. The Respondent said he had no answer to that.

## Findings In Fact

1. The parties entered in to a Tenancy Agreement for the property, commencing 6<sup>th</sup> October 2017;
2. The deposit paid by the Applicant to the Respondent was £550;
3. The Tenancy Deposit (Scotland) Regulations came in to force on 7<sup>th</sup> March 2011;
4. Since 15<sup>th</sup> May 2013 all tenancy deposits in Scotland must be held in approved tenancy deposit scheme;
5. The Respondent did not place the deposit in an approved tenancy deposit scheme;
6. The Respondent has a previous Tribunal decision against him for the same breach.

## Reasons For Decision

The Tenancy Deposit (Scotland) Regulations 2011 provide as follows:

### *Duties in relation to tenancy deposits*

3.—(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—

(a) pay the deposit to the scheme administrator of an approved scheme; and

(b) provide the tenant with the information required under regulation 42.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

(a) in respect of which the landlord is a relevant person; and

(b) by virtue of which a house is occupied by an unconnected person,

unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.

Court orders

9.—(1) *A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.*

*(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.*

*Court orders*

10. *If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—*

*(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and*

*(b) may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to—*

*(i) pay the tenancy deposit to an approved scheme; or*

*(ii) provide the tenant with the information required under regulation 42.*

The powers of the sheriff have been transferred to the Tribunal.

The Respondent was evasive and disingenuous in his answers throughout the CMD. He did not mention the previous decision against him, and attempted to blame his accountant for his non-compliance. He compounded that by blaming his solicitor for telling him not to return the deposit before this case had been resolved. He still holds the Applicant's money nearly a year after she vacated the property.

There is no entry in the Scottish Landlord Register for the property.

The Chairperson considered this to be an exceptionally serious breach of the regulations. The Respondent already has a Tribunal judgement against him for the same thing, in which he was found liable to pay the Applicant three times the deposit amount. The Regulations were brought in specifically to protect tenants. The deposit does not belong to the landlord, it is the tenant's property until an adjudication carried out by an approved scheme decides otherwise.

This Chairperson considered the case to be at the top end of the scale, and could see no mitigation whatsoever for the Respondent's position. The Chairperson also did not see how she could award less than had been awarded in the previous Tribunal when this breach was even more serious.

## **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.**

**Alison J Kelly**

**2<sup>nd</sup> October 2020**

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**Legal Member/Chair**

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**Date**