



**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/21/1361**

**Re: Property at 44 Oak Drive, Lenzie, Glasgow, G66 4BU (“the Property”)**

**Parties:**

**Mr Rehman Dar, Mrs Louise Dar, 133 WESTERGREENS AVENUE, Kirkintilloch,  
Kirkintilloch, G66 4AS; 133 Westergreens Avenue, Kirkintilloch, G66 4AS (“the  
Applicant”)**

**Mrs Rhonda McCubbin, 44 Oak Drive, Lenzie, Glasgow, G66 4BU (“the  
Respondent”)**

**Tribunal Members:**

**Alastair Houston (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that an order for payment of £700.00 be made in favour  
of the Applicants.**

**1. Background**

1.1 This is an application under Rule 103 of the Chamber Rules, being an application for an order for payment of three times the deposit paid under the tenancy agreement between the parties due to an alleged failure by the Respondent to obtemper her duties in terms of the 2011 Regulations.

1.2 The application was accompanied by copies of two written tenancy agreements between the parties, a bank statement purporting to show the transfer of the deposit to the Respondent, a letter confirming its return, emails between the Applicants and the previous letting agent correspondence between the Applicants and the approved deposit schemes operating in Scotland. The parties had both also lodged written

representations which largely focused on the condition of the property at the end of the tenancy.

## **2. The Case Management Discussion**

2.1 The Case Management Discussion took place by teleconference on 23 August 2021. The Second Named Applicant attended with her father as a supporter. The Respondent also attended. The Second Named Applicant confirmed that she was representing both Applicants as her husband, the First Named Applicant, was at work.

2.2 The Tribunal heard firstly from the Second Named Applicant. She confirmed that the tenancy in respect of the property had commenced in May 2017. The property was initially managed by Premierlet, letting agents. After the first 12 months of the tenancy, the Respondent took over management of the property herself. The tenancy deposit had been paid to Premierlet and returned to the Second Named Applicant when their management of the property had ended. She had then paid it to the Respondent. Whilst a new written agreement had been signed in 2018, the tenancy continued on the same terms as it had commenced upon. The Applicants resided at the property until 1 May 2021 when they moved out. The deposit was returned to them on that day by the Respondent's son and the letter lodged alongside the application was signed by him and confirmed this. The Second Named Applicant had telephoned the Respondent 10 days prior to vacating the property and had been told the deposit was held in her bank account. She had also contacted the three schemes operating in Scotland who had all confirmed they did not hold the deposit.

2.3 The Respondent confirmed the factual background spoken to by the Second Named Applicant was correct. She did not recall the exact date on which the deposit was paid to her in 2018. She had been preoccupied with caring for her elderly parents. Her father had since passed away and her mother remained ill. The Respondent purchased the property to reside there. She had moved in with her parents to provide care. The tenancy between the parties was the only occasion the property was made available to let. The Respondent had moved back to the property. She was not aware of her legal duties in respect of the tenancy deposit albeit a reminder of these were most likely in the paperwork received from Premierlet upon the termination of their management of the property. She did not own any other properties. She had ended the relationship with Premierlet due to the cost of their services as she had had to reduce her hours of employment due to providing care to her parents. In hindsight, this was a bad decision. In addition to the issues with the condition of the property, the Applicants had had an extra occupant within the property.

2.4 The Tribunal advised the parties it did not consider any other alleged breaches of the tenancy agreement to be relevant to the present application. The parties accepted this. The Second Named Applicant

confirmed that she did not take factual issue with the Respondent's personal circumstances as described by her. Accordingly, the Tribunal was of the opinion that a hearing was not necessary in respect of the application, given the lack of factual dispute between the parties.

2.5 The Tribunal indicated that it was minded to decide the application but wished time to consider the matter. Parties were given the option of an adjournment to later in the afternoon or to receive the decision in writing. The parties kindly indicated that they had no preference other than that which was more convenient to the Tribunal. Accordingly, the Case Management Discussion was adjourned in order that a written decision could be issued.

### **3. Findings In Fact**

3.1 The parties entered into a tenancy agreement in respect of the property which commenced on 30 May 2017.

3.2 In terms of paragraph 1.11 of the written tenancy agreement, a deposit of £650.00 was payable by the Applicants.

3.3 The deposit of £650.00 was paid by the Applicants to the Respondent's then agents, Premierlet.

3.4 The deposit was returned to the Second Named Applicant when Premierlet ceased to manage the property.

3.5 The Second Named Applicant repaid the deposit to the Respondent on 21 June 2018.

3.6 The Respondent thereafter held the deposit in her bank account.

3.7 The Respondent had resided in the property prior to making it available for let to the Applicants and provided care to her elderly parents during the course of the tenancy.

3.8 The tenancy continued until 1 May 2021 when the Applicants vacated the property.

3.9 The deposit was returned to the Applicants on 1 May 2021.

### **4. Reasons For Decision**

4.1 The duties of a landlord in respect of tenancy deposits are found in regulation 3 of the 2011 Regulations, which states:-

**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.*

*(1A) Paragraph (1) does not apply—*

*(a) where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and*

*(b) the full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord, within 30 working days of the beginning of the tenancy.*

*(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.*

*(2A) Where the landlord and the tenant agree that the tenancy deposit is to be paid in instalments, paragraphs (1) and (2) apply as if—*

*(a) the references to deposit were to each instalment of the deposit, and*

*(b) the reference to the beginning of the tenancy were to the date when any instalment of the deposit is received by the landlord.*

*(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.*

In the present circumstances, there is no dispute that the 2011 Regulations do apply. Whilst the deposit was initially lodged with an approved scheme through Premierlet, it was refunded to the Applicants and then repaid to the Respondent personally on 21 June 2018. Thereafter, the Respondent retained the deposit in her bank account. The Respondent has therefore breached her duty in terms of regulation 3(2) of the 2011 Regulations in that she has failed to ensure that the deposit was held by an approved scheme from the date it was first paid to such a scheme until it was repaid.

4.2 The ability of the Tribunal to make an order for payment following an application under regulation 9 of the 2011 Regulations is governed by regulation 10. This states:-

**10.**

*If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal —*

*(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 First-tier Tribunal 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.

In the event that the Respondent has failed to comply with any duty under regulation 3, the Tribunal **must** order her to pay an amount to the Applicants. The issue for the Tribunal to determine is what amount should be paid. The maximum of three times the amount of the deposit equates to £1950.00. The Tribunal has had regard to all that was said by the parties at the Case Management Discussion and the written material lodged in the course of the application.

4.3 In selecting an amount, the Tribunal has had regard to the comments of the Sheriff in the case of *Kirk v Singh* 2015 SLT (Sh Ct) 111 where it was said any sanction should be “*fair, proportionate and just having regard to the seriousness of the noncompliance.*” The Tribunal therefore considers the degree of the non-compliance to be the primary factor for assessing the sanction. In the present case, the deposit went unprotected for almost three years. It was, however, returned to the Applicants at the end of the tenancy agreement in full and they suffered no loss.

4.4 The Tribunal also considered the circumstances in which the non-compliance took place to be relevant. In the present case, the Tribunal accepts that the Respondent was not a professional landlord. She made the property available for let out of necessity due to personal circumstances. She accepted her decision to dispense with the services of Premierlet was, in hindsight, unwise. Whilst a novice landlord, the Tribunal also considered that the Respondent was aware of the circumstances in which the deposit had been released to the Applicants and repaid to her, given the correspondence accompanying the application from Premierlet. To leave the deposit unprotected for almost three years is a significant breach of duty.

4.5 The Tribunal has therefore balanced these factors and considers the sum of £700.00 to be a fair and proportionate sanction, given all the circumstances of the application. Whilst the deposit was unprotected for a long period and the Respondent should have done more to appraise herself of her duties under the 2011 Regulations, the Tribunal accepts that she was experiencing difficult personal circumstances. Furthermore, the deposit was returned in full at the end of the tenancy. As was indicated to the parties, the Tribunal did not consider any alleged breaches of the contractual agreement between them to be relevant to determining the sanction to be applied. If either party has suffered a loss as result of a breach by the other, there is a remedy available to them in the form of separate application to the Tribunal for the appropriate recompense.

## 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.

  
Alastair Houston

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Legal Member/Chair

23 August 2021

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Date