

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Regulations 3 and 10 of the Tenancy  
Deposit Schemes (Scotland) Regulation 2011**

**Chamber Ref: FTS/HPC/PR/23/0350**

**Re: Property at Flat 3/1, 30 Bain Street, Glasgow, G40 2LA (“the Property”)**

**Parties:**

**Miss Loreta Drozdovska, 2/1, Berryknowes Road, Glasgow, G52 2TT (“the Applicant”)**

**JHP Properties Limited, 30 Tobago Street, Glasgow, G40 2RH (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be made.**

**Background**

1. The background is laid out in the Case Management Discussion Note dated 30<sup>th</sup> May 2023.

**Case Management Discussion**

2. The continued Case Management Discussion (“CMD”) took place by teleconference. The Applicant represented herself. The Respondent was represented by Paul Molinari, Director.
3. The Chairperson introduced everyone and explained the purpose of a CMD in terms of Rule 17. She ascertained that the matter had not settled.
4. Mr Molinari queried if that meant that the Applicant was saying that she had not had her deposit back as he had definitely paid it to her. The Applicant confirmed

that she had received the money, but was proceeding with her application in relation to the deposit not having been placed in a Tenancy Deposit Scheme.

5. The Chairperson explained the current application to Mr Molinari.
6. She explained to both parties the procedure to be followed.
7. Mr Molinari asked to speak and said that deposits were dealt with by his letting agent, Marta, and had nothing to do with him. The Chairperson explained that in terms of the regulations the responsibility lay with the landlord. She asked him to confirm if the deposit had been placed in a scheme, and he said that it had not.
8. Mr Molinari went on to explain that that the flats were handled by a Polish girl, Marta, he was not sure of her second name. She had been handling the flats for years. She is a letting agent and is in charge of about 30 of the Respondent's flats. Marta normally lodges deposits with a deposit scheme. He was at pains to point out that his was not a fly by night company.
9. Mr Molinari said that Marta had overlooked registering the deposit in this instance. He said that Marta said there had been a discussion about the Applicant having a dog in the property. Dogs were not normally allowed but Marta had agreed. This seemed to have some bearing on why the deposit was not lodged.
10. Mr Molinari said that the Applicant left the property on 19<sup>th</sup> December 2022. Everyone in the company was away on holiday at the time. Marta came round and asked if the deposit could be returned, she said she had overlooked depositing it. Marta also said that there was damage due to the dog.
11. Mr Molinari said that he had forgotten all about it and then sheriff officers arrived to serve the papers for this case. He immediately obtained bank details and returned the deposit in full to the Applicant,
12. The Applicant said that she had dealt with Marta Gedryezka. She said that when she had returned the keys to the flat Marta had said that she would receive the deposit back and Marta would contact the landlord about it. She said that she contacted Marta a few times more about it and Marta blocked her number.
13. Mr Molinari said that the Respondent owns around 30 properties. He is a director, along with his two brothers. He is also a director of a double glazing business along with one of his brothers.
14. The Chairperson adjourned to consider the matter. Mr Molinari asked if the Tribunal would take in to account damage done by the Applicant's dog. The Chairperson confirmed that she would not as one of the points of the tenancy deposit scheme regulations was to provide an adjudication scheme for settling such matters. Mr Molinari also wished the Chairperson to take in to account

that he had been renting out properties for over 50 years and always returned deposits.

## Findings In Fact

1. The parties entered in to a tenancy agreement for the property commencing on 30<sup>th</sup> September 2016;
2. The Applicant paid a deposit of £60;
3. The deposit was not paid in to an approved scheme;
4. The Applicant vacated the property on 19<sup>th</sup> December 2022;
5. The deposit was not returned to the Applicant until 22<sup>nd</sup> March 2023;
6. The Respondent owns and rents out around 30 properties..

## Reasons For Decision

15. The Application has been brought under the Tenancy Deposit (Scotland) Regulations 2011, based on an alleged failure of the Respondents of their duties under Regulation 3, and seeking a payment in terms of Regulation 10.

Regulation 3 is as follows:

*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.*

Regulation 10 is as follows:

*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.*

16. The Tribunal has discretion in deciding what the Respondent should be ordered to pay. Serial offenders, i.e. landlords with multiple properties who do not place deposits in schemes are at the upper end of the scale. The current case is not at the upper end of the scale. However, there is still a breach of the Regulations. Renting out a property is a commercial decision and there are laws and regulations in place to protect parties who enter in to tenancy agreements. These must be complied with.
17. The Respondent's position was that the failure had been an oversight by the letting agent. Mr Molinari said that his company was not in the habit of not returning deposits. There was no reason to disbelieve him. A check of the Tribunal database did not disclose any decisions against the Respondent for not placing deposits in schemes.
18. Two of the reasons for the Regulations are to protect the tenant's deposit, as the money belongs to the tenant, and also to provide a fair and impartial mechanism for adjudicating on whether a deposit should be returned to a tenant or some or all be retained by the landlord.
19. The Tribunal has power to award a sum equivalent to up to three times the amount of the deposit.
20. The Tribunal considered the fact that the deposit had been unprotected for a period of six years, that the deposit had not been returned until three months after the Applicant vacated and that the Respondent owned multiple properties and should not be overlooking their obligations were all relevant factors.
21. The Tribunal decided to make an award of one and a half times' the deposit, equal to £900.

## **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 Kelly**

---

**Legal Member**

---

**Date**