



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy  
Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/23/2430**

**Re: Property at 13 Ashburton Court, Elgin, Moray, IV30 6FB (“the Property”)**

**Parties:**

**Mr David Payne, Dr Rebecca Helliwell, Malin House, Lochgilphead, Argyll, PA31 8NQ; Malin House, Lochilphead, Argyll, PA31 8NQ (“the Applicants”)**

**Ms Irene Nicoll, 13 Ashburton Court, Elgin, Moray, IV30 6FB (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants were entitled to an order for payment by the Respondent to the Applicants in the sum of £850.00.**

**Background**

1. By application dated 21 July 2023 the Applicants applied to the Tribunal for an order under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicants submitted written representations, extracts of WhatsApp messages between the parties, confirmation of the end date of the tenancy and proof of payment of the deposit in support of the application.
2. By Notice of Acceptance dated 27 July 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Sheriff Officers served notice of the CMD on the Respondent on 24 August 2023.

4. By emails dated 17 and 19 September 2023 the Respondent submitted written representations to the Tribunal.

### **The Case Management Discussion**

5. A CMD was held by teleconference on 28 September 2023. The Applicants attended in person as did the Respondent.
6. The Tribunal explained to the parties that its jurisdiction was restricted to determining whether the Applicants had paid a deposit to the Respondent and if so, how much and whether the Respondent had complied with the terms of Regulation 3 of the 2011 Regulations. The Tribunal went on to explain that if the Respondent had failed to comply and the Applicants had made a timeous application in terms of Regulation 9 then in terms of Regulation 10 the Tribunal was obliged to impose a financial penalty upon the Respondent not exceeding three times the amount of the deposit. The Respondent said that she understood this to be the case. The Tribunal went on to explain that being the case the various issues that the Respondent had raised with regards to the condition of the property at the end of the tenancy were not relevant to the present application.
7. The Tribunal sought to establish how much had been paid to the Respondent by way of a deposit. The Respondent agreed the Applicants had paid one month's rent as the deposit but argued that the rent was £850.00 with the Applicants agreeing to pay an additional £40.00 per month to cover the cost of SKY and broadband. The Tribunal attempted to ascertain if it was agreed that the Applicants had paid £1335.00 on 14 May 2022 being half a month's rent of £445.00 and a deposit of £890.00 but the Respondent did not accept this. Ultimately in order to reach an agreement the Applicants were prepared to accept that the deposit paid had been £850.00.
8. The Respondent confirmed that the Deposit had been retained by her from the time it was paid by the Applicants until it was eventually lodged with Safe Deposits Scotland on or about 12 July 2023. The Respondent explained that everything had been done in a hurry in order to let the Applicant's in to the property. She said she had offered to draw up a written lease but they had said it was not necessary. She said she had been unaware at the time that the Applicants' deposit was supposed to be lodged in an approved scheme. She said she had sought advice from the local council about what was required when renting out property and had provided smoke alarms and an Electrical Installation report and Portable Appliance Tests and had applied for Landlord Registration but had not been told about the Tenancy Deposit Scheme.
9. The Respondent advised the Tribunal that following the deposit being placed in the scheme there had been an adjudication and she had been given £310.00 and the remainder of the deposit had been paid back to the Applicants.

10. For the Applicants, Mr Payne said that although they had not been prejudiced financially as a result of the delay in the funds being placed in the scheme it had been emotionally difficult for them because of the texts that had been sent by the Respondent which had caused a lot of stress. He suggested that the Tribunal should consider imposing the maximum sanction of three times the deposit on the Respondent.
11. The Respondent submitted that the Tribunal should take into account the condition of the property at the end of the tenancy and the stress that this had caused her. She submitted that the content of the text messages were simply reflective of the condition that the Applicants had left the property in. She said she had been signed off work with depression for three months as a result of the proceedings. She went on to confirm she had never previously rented out her property and had no intention of doing so again in the future. She confirmed that the Applicants' funds when in her possession had been placed in her own ISA account. She accepted that the Tribunal had to impose a financial penalty upon her.

### **Findings in Fact**

12. The parties entered into a Private Residential tenancy that commenced on 14 May 2022 at a rent of £850.00 per calendar month plus a further £40.00 per month for SKY and broadband.
13. The Applicant paid the Respondent a deposit of £850.00 at the commencement of the tenancy.
14. The Respondent failed to lodge the deposit in an approved Tenancy Deposit scheme until about 12 July 2023.
15. The tenancy ended on 30 June 2023.
16. The Respondent had no previous experience of being a landlord.
17. The Respondent did not prepare a written tenancy agreement.
18. The Respondent did not familiarise herself with all the legislative requirements of being a landlord before registering as a landlord.
19. The Respondent does not intend to rent out her property again in the future.
20. The Applicants did not suffer any financial loss as a result of the delay in their deposit being placed in an approved tenancy deposit scheme.

### **Reasons for Decision**

21. The Tribunal was satisfied from the documents produced and the oral submissions that the parties entered into a Private Residential Tenancy agreement that commenced on 14 May 2023. The Tribunal was also satisfied that at the commencement of the tenancy the Applicant had paid a deposit of £850.00 to the Respondent and this was the subject of agreement between the parties at the CMD.
22. Regulation 3 of the 2011 Regulations requires a landlord to lodge a tenant's deposit in an approved scheme within 30 working days of receipt and to provide the tenant with details of the scheme. In the event of failure to comply with Regulation 3 a tenant can within three months of the end of the tenancy make an application to the Tribunal for an order. In this case the tenancy ended on 30 June 2023 and the application was made on 21 July 2023. The application is therefore timeous.
23. The Tribunal was satisfied that the Respondent failed to lodge the deposit in an approved tenancy deposit scheme throughout the duration of the tenancy and only did so after the tenancy had ended after the matter had been raised by the Applicants and the Respondent became aware of her obligations to place the funds in an approved scheme. As a result, the Applicants funds were unprotected for a period of almost 14 months.
24. Although the Applicants were upset at the tone of the correspondence sent to them by the Respondent this was largely concerned with the Respondent's perceived concerns regarding the condition of the property at the end of the tenancy and has little bearing on the failure of the Respondent to timeously lodge the deposit in an approved scheme. What is significant is that ultimately the funds were lodged in an approved scheme and the Applicants were therefore able to use the scheme's adjudication process to determine a fair resolution of any dispute as regards repayment of the deposit.
25. The Tribunal acknowledged that the Respondent had no previous experience of renting property and had decided not to rent her property again in the future. The Tribunal did not consider that the condition of the property at the end of the tenancy was a relevant factor. The Respondent by lodging the Applicants' deposit in an approved scheme was able to make use of the scheme's adjudication process to resolve any dispute as regards the condition of the property at the end of the tenancy. The Tribunal was not satisfied that the Respondent had paid sufficient attention to ensure that she had complied with the relevant legislation before renting out her property. The Tribunal considered that the Respondent should have taken greater care to have ensured that she complied with all aspects of the law before proceeding to rent out her property.
26. The Regulations were put in place to ensure compliance with the tenancy deposit scheme, and to provide the benefit of dispute resolution for parties. In terms of Regulation 10 of the 2011 Regulations, if the Tribunal finds that the Respondent is in breach of Regulation 3 it must impose a financial sanction upon the Respondent of up to three times the deposit. The Tribunal considers

that its discretion in making an award requires to be exercised in the manner set out in the case *Jenson v Fappiano* (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015) by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case. The Tribunal must consider the facts of each case appropriately. The Tribunal also took account of the decision of the Upper Tribunal UTS/AP/19/0020, where it was stated “Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals”.

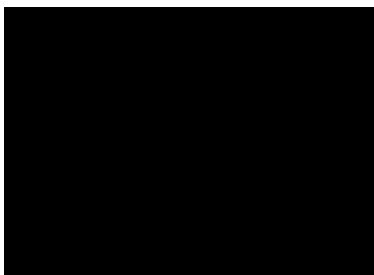
27. Although leaving a tenant’s deposit unprotected for a period of 14 months is a serious breach of the regulations the Tribunal does not consider that in all the circumstances it would merit a sanction at the upper end of the scale particularly as the Applicants have not suffered any financial loss and the Respondent does not intend to continue as a landlord. Taking everything into account the Tribunal is satisfied that a sanction of one times the deposit is a fair, just and proportionate award.

### **Decision**

28. Having carefully considered all the written representations and oral submissions and being satisfied that it had sufficient information before it to make a determination without the need for a hearing and the parties being in agreement that this was the case finds the Applicants entitled to an order for payment by the Respondent to the Applicants in the sum of £850.00.

### **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.**



**Legal Member/Chair**

**28 September 2023**  
**Date**

