



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

**Chamber Ref: FTS/HPC/PR/20/1197**

**Re: Property at 1/3, 50 Belville Street, Greenock, PA15 4UR (“the Property”)**

**Parties:**

**Mr Dominic Carlo Marino, 136 Renfield Street, Flat 3/10, Glasgow, G2 3AU (“the Applicant”)**

**Mr Michael Thomas, 8 Alloway Grove, Paisley, PA2 7DQ (“the Respondent”)**

**Tribunal Members:**

**Karen Kirk (Legal Member)**

1. This Hearing was a Case Management Discussion (hereinafter referred to as a “CMD”) fixed in terms of Rule 17 of the Procedure Rules and concerned an Application under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (hereinafter referred to as “the Deposit Regulations”). The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained and it was understood a final decision could be made. The hearing took place by teleconference due to the covid-19 pandemic.

**2. Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £350 in terms of Regulation 10(a) of the Regulations should be made.**

**3. Attendance and Representation**

The Applicant was present and unrepresented.

The Respondent was present and unrepresented.

#### **4. Preliminary Matters**

There were no preliminary matters raised. It was noted that the Respondent had lodged written representations in the case.

#### **5. The Case Management Discussion**

- The Applicant set out his position for the purpose of the CMD summarised as follows;
  - The initial deposit was £350 which he made on 18<sup>th</sup> March 2020 in a bank transfer of £891. The Applicant said this comprised of the deposit, one month's rent for April, and the rent payment to cover the proportion of March in the tenancy.
  - The Respondent said that he sought to terminate the tenancy giving notice at the start of May 2020. He said he posted the keys first class but the Respondent did not received them. The Applicant said he started to ask the Respondent which tenancy deposit scheme the deposit had been lodged with. He said the Respondent ignored his requests for this information and referred to text messages he had lodged.
  - The Applicant's position was that neither of the regulations were complied with namely the requirement to lodge the deposit with an approved scheme or to give information to the Applicant.
  - The Applicant said she felt the behaviour of the Respondent regarding the deposit was such that he sought an award given the failures.
- The Respondent set out his position for the purpose of the CMD summarised as follows;
  - The Respondent commenced his submission by reference to the written representations he had lodged. He said the deposit had at no point been under threat having been lodged in a savings account. He said both he and his wife had been unwell at the time of the commencement of the tenancy. He also referred to the written representations and the Tribunal noted he had made submissions contained therein regarding financial difficulties related to covid 19.
  - The Respondent said he accepted he did not lodge the deposit with an approved scheme or provide the necessary information. He said normally his tenants do not have the means for deposits.

##### **Agreed Facts**

- Both parties agreed the Tenancy commenced on 18<sup>th</sup> March 2020.
- Both parties agreed the Tenancy Agreement referred to a deposit of £350 to be paid for the property and which was paid.
- Both parties agreed that the Respondent did not provide information timeously as required in terms of Regulation 42 of the Deposit Regulations at the commencement of the Tenancy.

- Both parties agreed the Respondent did not register the tenancy deposit in connection with the property within 30 days of commencement of the Tenancy.

## **6. Reasons for Decision**

1. Rule 17 of the Procedure Rules provides that a Tribunal can do anything at a CMD which it may do at a Hearing, including making a decision. The Legal Member was satisfied that the Tribunal had everything before it that it would require in order to make a decision having regard to the Overriding Objective. The sufficiency of facts agreed by parties allowed a decision to be made. No further evidence not already before the Tribunal was referred to by parties.
2. The Application was brought timeously in terms of regulations 9(2) of the Deposit Regulations.
3. The Tenancy Agreement contains a clause explain a deposit was paid of £350 for the property. The Applicant paid this amount by bank transfer on the commencement of the tenancy in March 2020.
4. In terms of Deposit Regulation 10 if the FTT is satisfied that the landlord did not comply with any duty detailed in Regulation 3 then the FTT must order a landlord to pay the tenant or tenants an amount not exceeding three times the amount of the tenancy deposit.
5. The FTT was satisfied that the Respondent did not register the deposit with a deposit protection scheme as required by Regulation 3.
6. The FTT was also satisfied that a deposit of £350 had been paid by the Applicant to the Respondent.
7. The Respondent did provide the information to the Applicant as required by Regulation 42 of the Deposit Regulations.
8. If the FTT was satisfied a breach of the regulations had occurred the FTT had to make an order in terms of Regulation 10.
9. In terms of Regulation 10 the FTT is obliged to make an order up to 3 times the deposit of the applicants to the respondent.
10. When considering the Order and level of sanction the FTT must have regard to the severity of the breach and any mitigating factors.
11. The deposit was unsecured throughout the tenancy. The period of unsecurity was the duration of the tenancy. The Applicant has had to raise proceedings to seek recompense. The Tenancy was however short and the some of the deposit was returned.

12. In the case of *Jenson v Fappiano* 2015 G.W.D 4-89 in relation to the amount of such an Award under regulation 10 of the Regulations it was noted that a judicial analysis of the nature of the non-compliance was required and a value attached to reflect a sanction which was fair and proportionate and just given the circumstances.
13. It was further noted that the Sheriff said in said case that the value was not the starting point of three times the deposit minus the mitigating factors it was what was fair and proportionate in the exercise of balanced judicial discretion.
14. The Court of Session in *Tenzin v Russell* 2015 Hous. L.R 11 held that any payment in terms of Regulation 10 of the Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.
15. The FTT was therefore of the view that an Award should be made in the lower end of the scale as the deposit had been unsecured throughout the tenancy, but the tenancy was relatively short and the Applicant had received some of his deposit back. The Respondent had referred to difficult circumstances in his written representations to which the Tribunal took note. There had also been inconvenience and prejudice to the Applicant. Accordingly in balancing the circumstances it found the Applicant entitled to an award of one time the deposit to the sum of £350.

### **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.**

K Kirk

20<sup>th</sup> August 2020

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**Legal Member/Chair**

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**Date**