



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

**Chamber Ref: FTS/HPC/PR/23/1786**

**Re: Property at Flat 2, Millburn Cottage, Aberdeen, AB11 6SS (“the Property”)**

**Parties:**

**Mr Stephane Golovine, Miss Lisa Shewan, 51 Albert Street, Aberdeen, AB25 1XT  
 (“the Applicants”)**

**Liz Geraerts, Fairview Cottage, Blacktop, Aberdeen, Aberdeenshire, AB15 8QJ  
 (“the Respondent”)**

**Tribunal Member:**

**Nicola Irvine (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that there had been a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011; and it made an order for payment against the Respondent in favour of the Applicants in the sum of £825.**

**Background**

1. The Applicants submitted an application on 22 May 2023 under Rule 103 (Application for order for payment where landlord has not paid the deposit into an approved scheme) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.
2. The Applicants sought an order for payment on the basis that the Respondent was said to have breached the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).

3. By decision dated 20 June 2023, a Convenor of the Housing and Property Chamber having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion ("CMD").
4. Letters were issued on 10 July 2023 informing parties that a CMD had been assigned for 15 August 2023, which was to take place by conference call. In that letter, the parties were also told that they required to take part in the discussion and were informed that the Tribunal could make a decision on the application if the Tribunal has sufficient information and considers the procedure to have been fair.
5. On 24 July 2023, the Tribunal received written representations from the Respondent.

### **Case Management Discussion – 15 August 2023**

6. The CMD took place by conference call. All parties joined the conference call. The Tribunal explained the purpose of the CMD. The Applicants explained that they paid a deposit of £825 in two instalments on 29 July and 28 August 2020. The payment was made to the Respondent's letting agent. The Applicants have received approximately £400-£500 of the deposit back and have been told that a further £80 will be repaid. The remaining £200 or so is in dispute and the approved scheme is yet to conclude an adjudication process in relation to that. The Respondent explained that she owns other rental properties and they are all managed by agents on her behalf. She did not receive the deposit from the Applicants and her letting agent did not provide a copy of the tenancy agreement. The Respondent's letting agent advised her that a member of staff failed to make the arrangements to secure the Applicants' deposit.

### **Findings in Fact**

7. The parties entered into a private residential tenancy which commenced 28 August 2020.
8. The Applicants paid a deposit of £825 to the Respondent's letting agent.
9. The Respondent did not secure the Applicants' deposit in an approved scheme.

### **Reason for Decision**

10. The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits, and relevant to this case are the following regulations: -

*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.

#### *Sanctions*

9.– (1) A tenant who had paid a tenancy deposit may apply to the [ First-tier Tribunal ] 1 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 [...]2 no later than 3 months after the tenancy has ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the [First – tier Tribunal ] 1 – (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 ] 1 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.

11. The 2011 Regulations impose duties on the landlord, rather than a letting agent.
12. It was an undisputed fact that the Applicants paid a deposit of £825 to the Respondent's letting agent at the outset of the tenancy. It was also undisputed that the Respondent did not secure a deposit for the Applicants in an approved scheme until 10 April 2023. The Tribunal determined that the terms of regulation 10 were engaged, and the Tribunal must order that the Respondent pay the Applicants an amount not exceeding three times the amount of his tenancy deposit. The amount to be paid required to be determined according to the circumstances of the case, the more serious the breach of the regulations the greater the penalty.
13. The Tribunal considered that its discretion in making an award requires to be exercised in a manner consistent with the case *Jenson v Fappiano (Sheriff Court) (Lothian & Borders, Edinburgh) 28 January 2015*. It must be fair, just and proportionate and informed by taking account of the particular circumstances of the case.
14. The Tribunal considered the decision of the Upper Tribunal (UTS/AP/19/0020) which states: "*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.*"
15. For all the reasons set out above, the Tribunal considered that the penalty should be at the lower end of the scale; there was no evidence of repeated breaches or fraudulent intent and the sum involved was relatively modest. In respect of the failure to comply with the 2011 Regulations, a sanction of EIGHT HUNDRED AND TWENTY FIVE POUNDS (£825.00) is appropriate in this case.

## **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.**

**N Irvine**

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**Legal Member/Chair**

**15 August 2023**  
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**Date**