



**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 (Regulations)**

Chamber Ref: FTS/HPC/PR/19/2575

**Re: Property at 0/1 5 Levenhowe Road, Dalvait, Balloch, G83 8LS (“the
Property”)**

Parties:

Ms Ruth Quigley, 18 Dumbain Gardens, Balloch, G83 8FD (“the Applicant”)

**Mr Kenneth Currie, Cambuslea, 18 Shandon Brae, Balloch, G83 8ES (“the
Respondent”)**

Tribunal Members:

Alan Strain (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Respondent pay the sum of £920 to the
Applicant.**

Background

This is an application under Regulation 9 of the Regulations and Rule 103 of the
Tribunal Procedure Rules in respect of the alleged failure to protect a tenancy
deposit.

The Tribunal had regard to the following documents:

1. Application received 16 August 2019;
2. Correspondence submitted with the application;
3. Written Representations from the Respondent received 15 October 2019.

Case Management Discussion (CMD)

A.Strain

The case called for a CMD on 6 December 2019. The Applicant appeared and represented herself. The Respondent did not appear and was not represented.

The Tribunal was satisfied that the Respondent had received notification of the CMD and that the Tribunal could determine the matter in his absence. The Respondent had applied for postponement of the previous CMD which application had been granted. The Respondent had also lodged written submissions setting out his response to the Application.

The Tribunal made the following findings in fact from the documentary evidence:

1. The Parties entered into a tenancy of the Property from 15 April 2017 until 17 July 2019;
2. The Applicant paid a deposit of £460 to the Respondent on commencement of the tenancy;
3. The Respondent did not protect the deposit and has not paid the deposit back to the Applicant;
4. The Respondent is an inexperienced landlord and this was his first tenancy.

The Tribunal considered the Regulations and was satisfied that it had sufficient information to make a Decision and that the procedure was fair.

The Tribunal had regard to the case of ***Russell-Smith and Others v Uchegbu [2016] SC EDIN 64***. The Tribunal had to determine what was a fair, proportionate and just sanction in the circumstances of the case always having regard to the purpose of the Regulations and the gravity of the breach. Each case will depend upon its own facts and in the end of the day the exercise by the Tribunal of its judicial discretion is a balancing exercise.

The Tribunal weighed all the factors and found it to be of significance that the deposit had been unprotected for the duration of the tenancy; the deposit had not been repaid; the Respondent was an inexperienced landlord.

In all the circumstances of the case the Tribunal considered that a fair, proportionate and just sanction was £920 and accordingly orders the Respondent to pay that sum to the Applicant.

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.

Alan Strain

6 December 2019

Legal Member/Chair

Date