

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

---



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

**Chamber Ref: FTS/HPC/PR/17/0552**

**Re: Property at 5/1 Perth Street, Edinburgh, EH3 5DW ("the Property")**

**Parties:**

**Mr Gavin Donoghue, Mrs Caroline Donoghue, 25 Comely Bank Street, Edinburgh, EH4 1AR ("the Applicant")**

**Mr Gary Hanlon, 78/1 Canongate, Edinburgh, EH8 8BZ ("the Respondent")**

**Tribunal Members:**

**Lesley Johnston (Legal Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent as Landlord of the property at 5/1 Perth Street, Edinburgh, EH3 5DW failed to comply with Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 in that he failed to pay the Applicants' tenancy deposit into an approved scheme. Accordingly, the Tribunal makes an order for the Respondent to pay to the Applicants the sum of three thousand nine hundred and thirty seven pounds and fifty pence (£3,937.50).

**Background**

This is an application in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011, regulation 9 for an order under regulation 10 in respect of the Landlord's failure to comply with any duty in regulation 3. The procedure for such an application is governed by Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations ('the Rules').

The Applicants are the former tenants of the property at 5/1 Perth Street, Edinburgh. The Respondent is the Landlord of the property. By lease dated 24 May 2016, the

Applicants held a short-assured tenancy at the property. The Landlord served a Notice to quit on 25 July 2017. The Applicants removed from the property on 25 September 2017 in accordance with that Notice.

At the outset of the tenancy, the Applicants made payment of a tenancy deposit in the sum of £1,312.50. After the tenancy had ended, the Applicants requested repayment of the deposit from the Respondent. No payment was forthcoming which resulted in the Applicants making this application to the Tribunal.

The application was made to the Tribunal on 20 December 2017. Accordingly, the application has been made timeously in terms of Regulation 9.

### The hearing

The case called for a continued Case Management Discussion today ( 9 April 2018). The hearing was continued from 14 February 2018 on which date I issued directions to the parties as follows:

- "1. The Respondent to lodge written representations with the Tribunal and to confirm whether or not he intends to defend the proceedings within 21 days of today's date;
2. The Applicants to lodge any further written representations within 28 days of today's date
3. Parties to consider any witnesses they might require to give evidence and provide a list of witnesses to the Tribunal within 28 days of today's date
4. Parties to lodge any documents on which they wish to rely in respect of the application within 28 days of today's date."

The Applicants were personally present at the hearing.

The Respondent was neither present nor represented.

The Applicants submitted the following documents in accordance with the directions of 14 February, namely:

1. A letter from the Letting Protection Service Scotland dated 11 March 2018 confirming that they do not hold a deposit for the Applicants in respect of 5/1 Perth Street, Edinburgh
2. A letter from My Deposits (undated) confirming that they do not hold a deposit for 5/1 Perth Street, Edinburgh
3. A letter from Safe Deposits Scotland (undated) confirming that they do not hold a deposit for 5/1 Perth Street, Edinburgh

4. An email from Albany Lettings dated 24 May 2016 providing the bank details into which the deposit and rent payments were to be made
5. A letter from Albany Lettings dated 15 February 2018 confirming that Albany Lettings received £1,312.50 in respect of the deposit for the tenancy and confirming that the funds were paid to the Landlord, Gary Hanlon, on 7 June 2016
6. A letter from Halifax confirming the details of the deposit and first month rent payments made to Albany Lettings
7. Mr Donoghue's bank statements showing the payments on 18 and 24 May 2016

The Respondent did not submit any written representations or lodge any documents in advance of the continued Case Management Hearing.

The outcome of the last hearing was intimated to the Respondent on 22 February 2018 by Recorded Delivery post by intimation of the 'Notes on a Case Management Discussion'. There was further intimation to the Respondent by Recorded Delivery letter from the Tribunal dated 10 March 2018.

I am therefore satisfied that the Respondent has been served with notice of today's hearing.

### **Findings in fact**

I make the following findings in fact:

1. That the Applicants held a short-assured tenancy at 5/1 Perth Street, Edinburgh pursuant to lease dated 24 May 2016;
2. That the Respondent is the Landlord under the lease;
3. That in terms of clause 7 of the lease the Tenant was to pay a deposit of £1,312.50 in cleared funds to the Landlord;
4. That in terms of clause 7 of the lease, the deposit was to be paid into an approved scheme of the Landlord's choosing in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011;
5. That the Applicants made payment to the Landlord's agents, Albany Lettings, of £200 by way of a holding deposit on 18 May 2016;
6. That the Applicants made a further payment to the Landlord's agents, Albany Lettings of £1,112.50 on 24 May 2016;

7. That Albany Lettings received the full payment of £1,312.50 and made payment to the Respondent on 7 June 2016;
8. That the tenancy deposit is not held in an approved scheme;
9. That the Respondent has failed to return the deposit to the Applicants following the end of the tenancy;

### Reasons

I am satisfied that the application meets the formal requirements of Rule 103.

I turn to the substantive application.

The Applicants seek an order for the payment to them of three times the tenancy deposit of £1,312.50 (namely, £3,937.50) on the basis that the Respondents failed to pay their deposit into an approved tenancy deposit scheme in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ('the Regulations').

In terms of Regulation 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 –
- (2) (a) pay the deposit to the scheme administrator of an approved scheme; and  
  
(b) provide the tenant with the information required under regulation 42.

The tenancy is a 'relevant tenancy' since the Respondent is a 'relevant person' and the house is occupied by an 'unconnected person'.

The Respondent is a 'relevant person', since he is not a local authority, a registered social landlord or Scottish Homes (see s 83(8) of the Antisocial Behaviour (Scotland) Act 2004).

Based on the information presented to me by the Applicants, I am satisfied that the Respondent has failed to comply with his duties under regulation 3, by having received a tenancy deposit from the Applicants and having failed to pay it into an Approved Scheme.

Being satisfied that the Respondent has not complied with any duty under Regulation 3, an order under Regulation 10 is appropriate.



In terms of Regulation 10, the Tribunal “must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit”.

The Tribunal has an “unfettered discretion” as to the level of sum that may be awarded under Regulation 10 (see *Fraser and Pease v Meehan* (Edinburgh Sheriff Court, unreported) 29 August 2013 per Sheriff Mackie at para [16]).

The Applicants’ deposit has not been paid into an approved scheme by the Respondent. The Respondent has failed to comply with all of his duties under regulation 3. The Respondent ought to have been aware of his duties in that regard, particularly in light of the fact that his duties in terms of the Regulations were also set out in clause 7 of the lease between the parties.

It is only now that the tenancy is at an end that the Applicants have been made aware of the Respondents’ failure. No mitigation has been offered by the Respondent and he has taken no part in these proceedings.

In the circumstances, I exercise my discretion to grant the sum of three times the value of the deposit (£3,937.50) for payment by the Respondent to the Applicants.

### **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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

L Johnston

\_\_\_\_\_  
Legal Member/Chair

9/4/18  
\_\_\_\_\_  
Date