



**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**

**Chamber Ref: FTS/HPC/PR/20/1782**

**Re: Property at 41 Hartlaw Crescent, Glasgow, G52 2JJ (“the Property”)**

**Parties:**

**Miss Lynsey Lansdowne, 41 Hartlaw Crescent, Glasgow, G52 2JJ (“the Applicant”)**

**Tammi Clark, 122 Aries Pebble Beach, Amarilla Golf, San Miguel de Abona,  
38629, Spain (“the Respondent”)**

**Tribunal Members:**

**Lesley Johnston (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent as Landlord failed to comply with Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and made an Order for the Respondent to pay the Applicant the sum of eight hundred and ninety two pounds (£892).**

**Background**

The Applicant applies to this Tribunal in terms of Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (‘the Regulations’). The application is made to the Tribunal in terms of rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules for Procedure) Amendment Regulations 2017 (‘the rules’).

The Applicant seeks an Order for Payment from the Tribunal in terms of regulation 10 in respect that the Respondent failed to pay the tenancy deposit into an approved tenancy deposit scheme within 30 working days of the beginning of the tenancy.

**The Case Management Discussion**

The case called on 14 October 2020 at 10am for a Case Management Discussion by telephone.

The Applicant was represented at the hearing by Mr Wishart, of Shelter Scotland. The Respondent was neither present nor represented. The Tribunal was satisfied that notice of the hearing was provided to the Respondent by international recorded delivery post dated 15 September 2020. The papers were received and signed for on 2 October 2020. Accordingly, the Tribunal proceeded with the hearing in the absence of the Respondent in terms of Rule 29.

The following documents were lodged by the Applicant in terms of the application:

1. Application form dated 25 August 2020 and covering letter from Shelter;
2. Email from Safe Deposits Scotland that they held a deposit in respect of the tenancy as at 29 October 2019;
3. Notice to Leave served on the Applicant dated 18 August 2020;
4. Copy tenancy agreement between the parties dated 16 July 2020;
5. Written submission for the Applicant dated 17 September 2020;
6. Screenshot of a text message between Thomas Clark and the Applicant dated 11 July 2019 lodged on 13 October 2020.

Mr Wishart apologised for the late lodging of the screenshot of the text message but explained that it was only when liaising with his client in advance of the hearing that it had come to light. The Tribunal exercised its discretion in terms of rule 22 to allow the screenshot to be lodged although late, in respect that the Applicant had a reasonable excuse for failing to lodge it timeously.

#### Submissions for the Applicant

The Applicant submitted that his client entered into the tenancy at 41 Hartlaw Crescent, Glasgow, G52 2JJ on 16 July 2020. In terms of the tenancy agreement, a deposit of £595 was to be paid by the Applicant. Shortly prior to the start of the tenancy, the Applicant was hospitalised and therefore, she made arrangements for her father to deliver the deposit funds in cash to the Respondent, via the Respondent's partner, Thomas Clark on around 7 July. In that regard, Mr Wishart referred to the text message between Thomas Clark and the Applicant's father dated 11 July in which Thomas Clark requested "*a contact email for Lyndsay and yourself so I can send receipt for cash and safe scotland account details (deposit scheme)*".

Mr Wishart submitted that there has been no representation made by the Respondent to the effect that the deposit was not received.

Mr Wishart referred to the tenancy agreement and the fact that it was signed on 16 July 2020, the day on which the tenancy commenced. He referred to the email from Safe Deposits Scotland showing that the tenancy deposit had been received by them on 29 October 2019, 75 working days after the commencement of the tenancy.

Mr Wishart submitted that the deposit not having been paid timeously in terms of regulation 3, the Tribunal must make an order not exceeding three times the amount of the tenancy deposit.

In relation to the level of sanction that would be appropriate in the case, he submitted that an award at the maximum amount of three times the level of the deposit was appropriate. He submitted that prior to entering into the tenancy the Applicant had been homeless and has two disabled children. She has been out of pocket in relation to repairs requiring to be carried out at the property. She has raised a separate application with the Tribunal in relation to repairs at the property.

In addition, she has been served with a Notice to Leave by the Landlord, with an application capable of being made to the Tribunal after 21 November 2020.

The Applicant considered there was a power imbalance between her and the Landlord. Until approaching Mr Wishart for assistance, she was fearful of raising matters relating to repairs with the Landlord on the basis of her prior experience of being homeless. She had a reasonable expectation that, on entering into a private residential tenancy, her Landlord would operate within the law. She faced a period of time in which her tenancy was unprotected, although she accepted that it was now protected.

Mr Wishart urged me to take into account all of the circumstances of the case and reminded me that in making a decision as to sanction, the Tribunal has an unfettered discretion.

### **Findings in Fact**

1. The Applicant and the Respondent entered into a Private Residential Tenancy in respect of the property at 41 Hartlaw Crescent, Glasgow, G52 2JJ on 16 July 2020;
2. Prior to the commencement of the tenancy, the Applicant paid to the Respondent the deposit of £595 in cash;
3. The deposit was paid to Safe Deposits Scotland on 29 October 2019
4. The Applicant continues to reside in the property;
5. The Applicant applied to this Tribunal on 25 August 2020, with the copy tenancy agreement provided on 1 September 2020.
6. The Respondent is not a local authority, registered social landlord or Scottish Homes
7. The Applicant and Respondent are not related.

### **Reasons for Decision**

The tenancy is a relevant tenancy for the purposes of regulation 3.

The Applicant made an application to the Tribunal timeously in terms of regulation 9, having lodged the application not later than three months after the end of the tenancy.

The Tribunal is satisfied from the information before it that the Landlord did not comply with her duty under regulation 3. The deposit was paid to Safe Deposits Scotland some 75 working days after the commencement of the tenancy, rather than within 30 working days.

The Tribunal has an “unfettered discretion” as to the level of penalty to be paid under regulation 10(a) (see *Fraser and Pease v Meehan* (2013 SLT (Sh Ct) 119 per Sheriff Mackie at p 121). The Tribunal is also mindful of the need to proceed in a manner that is fair, proportionate and just having regard to the circumstances of the case including the seriousness of the breach and the purpose of the regulations (see *Tenzen v Russell* 2014 GWD 4-90; *Kirk v Singh* 2015 SLT (Sh Ct) 111; *Jenson v Fappiano* 2015 SC Edin 6).

The Tribunal has taken into account that the purpose of the regulations was to protect the tenancy deposit throughout the duration of the tenancy and for parties to have access to the dispute resolution procedure should any issues arise on termination of the lease. In this case, the Respondent appeared to be aware of the requirement to lodge the deposit with an approved scheme, reference being made of their intention to do so in a text message from the Respondent’s husband to the Applicant on 11 July.

For the period to 29 October 2019, the Applicant was deprived of the protections provided by the regulations. The Applicant’s deposit was unprotected for 75 working days from the commencement of the tenancy, being 45 days after the date upon which the deposit ought to have been paid into an approved scheme under the regulations. During that time, the Applicant has experienced issues in relation to repairs requiring to be carried out to the tenancy. She had a reasonable expectation that her tenancy was protected during the period to 28 October 2019, but subsequently found out that wasn’t the case.

No mitigation has been provided by the Respondent and therefore the Tribunal does not have any information before it as to why there was a delay in lodging the deposit with an approved scheme.

However, the Tribunal has also taken into account that the deposit is now protected and has been protected for nearly a year. While the Tribunal was conscious that the Applicant was unaware of where the deposit was lodged until she approached her representatives in relation to the dispute between the parties as to repairs in around March 2020, the deposit and the dispute resolution service has been available to the Applicant since 29 October 2019.

The Tribunal did not consider that the Applicant’s personal circumstances, including the fact that she had previously been homeless and her children’s personal circumstances, the separate application made to the Tribunal in relation to repairs, and the fact that she may now face an action for eviction at the end of the period in the Notice to Leave were relevant considerations to be taken into account in assessing the level of sanction to be imposed as a result of a breach of the regulations. The Tribunal attached no weight to these factors in assessing what level of sanction to be imposed.

The Tribunal therefore considers that in the circumstances of this case, the breach of the regulations is towards the lower to middle end of the scale of seriousness. The Tribunal does not therefore consider that it would be proportionate to award the maximum award of three times the deposit.

## Decision

In all the circumstances of this case, the Tribunal exercises its discretion and orders the Respondent to make payment of the sum of £892, being a sum equal to 1.5 times the tenancy deposit. The Tribunal considers that sum to be fair, proportionate, and just in all the circumstances of the 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.**

Lesley Johnston

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**Legal Member/Chair**

**14 October 2020**  
**Date**