



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

Chamber Ref: FTS/HPC/PR/23/2791

Re: Property at Flat 5 11 Deemount Road, Aberdeen, AB11 7TY (“the Property”)

Parties:

Mr James Samson, 15 Strand, Innerleithen, EH44 6HT (“the Applicant”)

Mr Colin McHardy, 56 Springfield Ave, Aberdeen, AB15 8JB (“the Respondent ”)

Tribunal Members:

Lesley-Anne Mulholland (Legal Member)

DECISION IN THE ABSENCE OF THE RESPONDENT

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an Order for Payment from the Respondent in favour of the Applicant in the sum of £1,250.

BACKGROUND

1. The Applicant is the former tenant of the property Flat 5, 11 Deemount Road Aberdeen AB11 7TY (“the Property”). The Respondent is the owner and Landlord of the property. The Applicant seeks a Payment Order for the failure of the Respondent to protect his deposit by paying it into a safe deposit scheme.
2. A Legal Member of the First-tier Tribunal with delegated powers of the Chamber President, considered the application paperwork and accepted that the application as validly made.

3. The Case Management Discussion took place remotely by telephone on 3 November 2023. The Applicant was present and unrepresented. The Respondent failed to attend without excuse. I waited until 10:30 am to give the Respondent an opportunity to join. I checked with the Clerk and Administration to see if he had made contact. I was advised that he had not.
4. Having had regard to the overriding objective and having satisfied myself that the Respondent was properly informed of today's Case Management Discussion, I decided to proceed in his absence. The Respondent had been in communication with the Tribunal and set out his position by making an offer to pay the deposit of £625 less £180 cleaning fee leaving a balance of £445.
5. The Applicant outlined the reasons for the application. In summary, the Applicant submits that the Respondent failed to lodge the deposit in a Safe Deposit Scheme.
6. Having considered all of the paperwork before me and oral submissions made by the Applicant, I am satisfied that the deposit was paid to the landlord in October 2022 and still has not been registered in a safe deposit scheme. The Applicant has made it clear in his application that he emailed the landlord on several occasions over a period of time asking for details of the safe deposit scheme where the deposit was registered. The landlord failed to respond. The Applicant went onto various websites to check if his deposit had been registered and could not find any trace of it.
7. The Respondent has not provided submissions to say that he has in fact paid the deposit into a safe deposit scheme and in the absence of any evidence that that has been done, I am satisfied that the landlord has failed to register the deposit.
8. The law requires that a deposit has to be paid into a Safe Deposits Scheme within 30 days. The tenancy commenced in October 20 22 and the deposit still has not been registered. This is a significant delay and means that the Respondent has had the deposit available to him for the period.
9. The Respondent made an offer to pay the deposit is the cleaning fee to the Applicant in July 2023 however he has not paid the balance to the applicant. The Respondent should have paid the balance to the Applicant and left the disputed amount to be determined by a Tribunal.
10. As a result of the Applicant not receiving the return of his deposit, he was unable to secure alternative accommodation and had to go into university halls of residence to finish his degree. This caused him an amount of stress at a time when he was doing exams.

11. It is clear that the applicants deposit has been unprotected since October 2022 and the undisputed amount has not been returned to him.
12. Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 provides:
 - (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.
13. Regulation 10 of the Tenancy Deposit Regulations provides:

'If satisfied that the landlord did not comply with any duty in regulation 3, the First-tier Tribunal:

 - (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 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.
14. I must determine the level of compensation to be paid to the Applicant.
15. Regulation 10 of the 2011 Regulations provides that where there has been a breach of Regulation 3 and Regulation 9 has been satisfied, the Tribunal **must** impose a sanction of up to three times the deposit paid by the Tenant.
16. Any award under Regulation 10 is required to reflect a sanction which is fair, proportionate and just given the circumstances (Jensen v Fappiano 2015 GWD 4-89). In Tenzin v Russell 2015 House. L.R. 11 it was held that any payment in terms of Regulation 10 is the subject of judicial discretion after careful consideration of all the circumstances.
17. I have taken into account that the Applicant's deposit has remained unprotected since October 2022. This is a serious breach. The Respondent has not put forward any mitigation for failing to protect the deposit. Weighing everything up, individually and together, I have determined the appropriate sanction to be the equivalent of two times the deposit. Accordingly, the

Respondent is sanctioned to make payment of compensation to the Applicant in the sum of £1,250.

DECISION

An Order for Payment is granted in the amount of £1,250.

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.

