

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

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”)**

**Chamber Ref: FTS/HPC/PR/23/3160**

**Re: Property at 0/1 3 Queen's Park Avenue, Glasgow, G42 8BX (“the Property”)**

**Parties:**

**Miss Irene Alvarado Reinoso, Miss Holly Samantha Bruton, Glen Garth, Blyth Square, West Linton, EH46 7EG (“the Applicant”)**

**Mr Mukhtar Muhammad, 923 10/A gulzar lodge, chah koray wala, Multan, Pakistan (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £1800 should be made in favour of the Applicants.**

**Background**

1. The Applicants seeks an order in terms of Regulation 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). A tenancy agreement, a letter giving notice to terminate the tenancy, copies of emails and WhatsApp messages, a receipt for the deposit and emails from the three deposit schemes were lodged with the application.
2. A copy of the application was served on the Respondent by Sheriff Officer. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 11 December 2023 at 2pm. The Respondent requested a postponement of the CMD because he is currently living in Pakistan and has health issues. The request was refused on the basis that the CMD was taking place by telephone conference call so the Respondent

could participate from Pakistan or that he could arrange for a representative or lodge written submissions. The Respondent notified that Tribunal that he would send written submissions by email. Other than the emails requesting a postponement, which included a statement that the deposit of £1195 had been repaid to the Applicants on 8 September 2023, no further submissions were lodged.

3. The CMD took place at 2pm on 11 December 2023. Both Applicants participated. The Respondent did not participate and was not represented.

### **Summary of discussion at CMD**

4. The Applicants referred the Legal Member to the documents lodged with the application. They stated that a deposit of £1195 was paid at the start of the tenancy. This included an additional deposit of £250 because they wanted to keep a pet at the property. They said that the whole deposit was repaid after the tenancy ended. They can't be certain that this was on 8 September 2023 but think that might be the correct date. The Legal member noted that they had lodged a receipt for the deposit from a letting agent. The Applicants said that a letting agent had signed them up to the tenancy agreement and taken the initial payments. During the discussion with the agent, they were told that the deposit would be placed in a scheme, and they would be sent evidence of this. Thereafter, the letting agent was not involved and they dealt with the Respondent's son and then the Respondent himself.
5. The Applicants told the Tribunal that they don't know whether the Respondent has other rental properties or how long he has been a landlord. However, they were told that the previous tenants had been a couple who had lived there for a long time. The Applicants received mail for the previous tenants when they first moved in. The Applicants advised the Legal Member that they are seeking the maximum penalty because they sent an email in May 2023 to the Respondent to ask about the deposit. They referred to the email response from the Landlord dated 7 May 2023. In the email the Respondent states that the deposit was in his bank account and that he would let them know when he had lodged it in a scheme. However, he did not do so, and the deposit was repaid to them by the Respondent himself.

### **Findings in Fact**

6. The Applicants are the former tenants of the property.
7. The Respondent is the owner and former landlord of the property.
8. The tenancy started on 2 December 2020 and terminated on 15 August 2023
9. Prior to the start of the tenancy the Applicants paid a deposit of £1195

10. The deposit was not lodged in an approved scheme and was repaid to the Applicants on or about 8 September 2023.
11. The property was occupied by tenants prior to the Applicants' tenancy.
12. On 7 May 2023, the Applicants sent an email to the Respondent asking about the tenancy deposit scheme. The Respondent replied stating that the deposit was in his bank account and that he would provide them with details of the relevant scheme when he had lodged it.

### Reasons for Decision

13. Regulation 3 of the 2011 Regulations states –

(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.

(1A) Paragraph (1) does not apply –

- (a) Where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and
- (b) The full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord,  
Within 30 working days of the beginning of the tenancy.

14. Regulation 9 of the 2011 Regulations states that (i) a tenant who has paid a tenancy deposit may apply to the First-tier Tribunal 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 no later than 3 months after the tenancy has ended

15. Regulation 10 of the 2011 Regulations stipulates that if the Tribunal is satisfied that the landlord did not comply with a duty in terms of regulation 3, it “**(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.**” The Tribunal therefore determines that an order must be made in favour of the Applicant.

16. From the documents lodged with the application, including a copy of a private residential tenancy agreement, the Legal Member is satisfied that the tenancy was a relevant tenancy for the purposes of Regulation 3. The Legal Member is also satisfied that the Applicants paid a deposit of £1195 at the start of the tenancy and that this was not lodged in an approved scheme. This is established by the receipt from the letting agent and the emails from the three approved schemes which state that the Applicants' deposit had not been lodged

with them. It is also established by the Respondent's communications with the Applicants and his submission to the Tribunal. On 7 May 2023, he sent an email to the Applicants which stated that he held the deposit in his bank account. On 12 November 2023, he sent an email to the Tribunal which stated that the deposit of £1195 had been repaid to the Applicants on 8 September 2023. He did not provide any evidence that the deposit had been lodged in a scheme at any point during the tenancy.

17. In terms of Regulation 10, an award must be made where there has been a failure by a landlord to comply with the Regulations. In assessing the award, the Legal Member had regard to the following factors:-

- (a) The whole deposit was repaid at the end of the tenancy, three weeks after the tenancy had ended. It is unlikely that it would have been repaid any more quickly had it been in a scheme. There is therefore no financial loss to the Applicants.
- (b) The tenancy agreement specifically states that the deposit would be lodged in a scheme. This was confirmed verbally by the letting agent when they signed the lease.
- (c) The Respondent provided no explanation to either the Applicants or the Tribunal for his failure to lodge the deposit. The fact that he failed to do this even when the matter was brought to his attention in May 2023, suggests that he made a deliberate decision to retain it and did not simply forget about his obligations.
- (d) The Respondent told the Tribunal in an email that he has lived in Pakistan for a number of years. This is not an excuse for failing to fulfil his obligations as landlord. If he is unable to attend to these himself, the Respondent ought to have appointed a letting agent to deal with these obligations on his behalf.
- (e) From the information provided by the Applicants it appears that the Respondent is not an inexperienced landlord. However, the extent of his experience is not known.

18. In the case of *Rollett v Mackie* (2019 UT 45), the Upper Tribunal refused the appeal by the Applicant who argued that the maximum penalty ought to have been imposed. Sheriff Ross commented that the "level of penalty requires to reflect the level of culpability" and that "the finding that the breach was not intentional...tends to lessen culpability" (13). He goes on to say, "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."

19. In the present case, none of the aggravating factors highlighted by Sheriff Ross are present. The Respondent was certainly negligent in his management of the

deposit, but not reckless. Most importantly, there was no financial loss. The Legal Member is satisfied that the breach is not one which should attract the maximum penalty. However, the failure was not a minor or technical breach. The Legal Member determines that the sum of £1800 should be awarded to the Applicants.

## **Decision**

20. The Tribunal determines that an order for payment of the sum of £1800 should be made in favour of 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.**

**Legal Member**

**11 December 2023**