



**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/23/3940**

**Re: Property at 47A Fort Street, Ayr, KA7 1DH (“the Property”)**

**Parties:**

**Ms Sarah Dall 'Arche, 31 Waggon Road, Ayr, KA8 8BA (“the Applicant”)**

**David Grant, Flat A, 59 Dalblair Road, Ayr, South Ayrshire, KA7 1UQ (“the  
Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that an order for payment should be granted in favour of  
the Applicants in the sum of £500.**

**Background**

- 1) The Applicants lodged an application dated 7<sup>th</sup> November 2024 under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”), applying for an order in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”).
- 2) The Applicants lodged with the Application a copy of the tenancy agreement showing the Landlord was the Respondent and the tenant is the Applicant. The tenancy started on July 2021, that rent was due in the sum of £350 per month and that a deposit was payable of £350. The Applicant that they paid a deposit of £350 on 28<sup>th</sup> August 2020. The Applicants also lodged copy e-mails from the 3 deposit scheme companies namely Safe Deposit Scotland; My Deposit Scotland and Letting Protection Scotland confirming that no deposit was being held for the Applicant at the Property address.

- 3) The Respondent was served with a copy of the application and papers by Sheriff Officer on 19<sup>th</sup> December 2023 and details of how to dial in were enclosed with the papers. The Respondent has lodged written representations and has stated he is not a business but operates letting flats as a side-line; he admits he did not lodge the deposit into a scheme because he was not aware it was mandatory but thought it was voluntary. He advised that he has returned all deposits before and returned the Applicant's deposit in full at the end of this tenancy. Finally the Respondent advised that he did not lodge the deposit due to ignorance on his part and has now lodged all tenant's deposits with Safe Deposit Scotland.

### **The Case Management Discussion**

- 4) The Case Management Discussion ("CMD") took place by telephone conference on at 2pm on 8<sup>th</sup> February 2024. Mr Tierney from Ayr Housing Aid Centre attended as the Applicant's representative. The Applicant Ms Dall Arche was also in attendance as well as Mr Grant, the Respondent.
- 5) The legal member explained what the purpose and order of the CMD was and explained that a Tribunal could make a final decision after a CMD as well as after a full hearing if it felt it was fair and appropriate to do so.
- 6) Mr Tierney explained that the Applicant was seeking a penalty for the failure of the Respondent who was the landlord in the tenancy of the Property to lodge the deposit of £350 in a tenancy deposit scheme. He confirmed the tenancy started on 25<sup>th</sup> July 2021 when the deposit was paid and came to an end after Mr Grant had asked the tenant to leave although Mr Tierney pointed out no formal Notice to Leave paperwork had been served. Mr Tierney confirmed he had provided advice to the Applicant on the notice she had been served, which was not in the form of a valid Notice to Leave and on the type of tenancy agreement she had since the tenancy itself did not follow the style of a private residential tenancy. He also advised her on her right to lodge a claim for a penalty for failure to lodge the deposit in a scheme. Mr Tierney confirmed that the tenancy ended by mutual agreement on 24<sup>th</sup> August and the Applicant did receive a full return of the deposit from the Respondent immediately after the end of the tenancy. Mr Tierney submitted that the Respondent was a commercial landlord as his emails and website mentioned trading as Ayr Residential and indicated he had been trading for many years, as such Mr Tierney submitted he should have known of the rules regarding deposits.
- 7) The Respondent admitted the failure to lodge the deposit was completely his mistake and advised that he had thought it was a voluntary scheme and not a mandatory scheme. He confirmed that he has now lodged all his deposits in a tenancy deposit scheme and has read up a lot more on his duties as a landlord. He advised that he does regard his renting out of 3 properties, which he has done off and on for a number of years, as more of a side-line to his main full time job and that he has friends and family that help him rather than operating it as a business. He advised that although the tenancy was not fully clean when the Applicant left he did not withhold any of the deposit and returned it straight away in full. He advised that he had always kept the deposits in a separate bank account and has repaid

previous ones to past tenants apart from deducting in one case money for a broken lamp. He advised the current deposits have all been paid into a scheme in early January 2024.

## **Findings in Fact**

- 8) The parties entered into a tenancy agreement whereby the Applicant was the tenant in the Property rented from the Respondent who is the landlord
- 9) The tenancy commenced on 25<sup>th</sup> July 2021
- 10) The Tenancy ended by mutual agreement on 24<sup>th</sup> August 2023
- 11) A tenancy deposit of £350 was paid to the Respondent by the Applicant at the commencement of the tenancy.
- 12) The deposit was not lodged with an approved tenancy deposit scheme and has been unprotected during the tenancy.
- 13) The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.
- 14) The Respondent is an established landlord who has rented out up to 3 properties over a number of years
- 15) The Respondent was aware of the scheme for tenancy deposits but thought it was voluntary and not mandatory.
- 16) The Respondent has lodged his current deposits in a tenancy deposit scheme since January 2024.
- 17) The Respondent repaid the deposit in full to the Applicant at the end of the tenancy.

## **Reasons for Decision**

- 18) The fact that the Applicants' deposit was not lodged with an approved tenancy deposit scheme as required by Regulation 3 is admitted by the Respondent. This means the tenant is vulnerable to the landlord going bankrupt and deprives both parties of the opportunity of dispute resolution through an approved tenancy deposit scheme at the end of the tenancy.
- 19) The Regulations were put in place to ensure compliance with the tenancy deposit scheme, to protect deposits for tenants and to provide the benefit of dispute resolution for parties. When a breach of the Regulation has taken place the Tribunal must make an award. The Tribunal considers that its discretion in making an award requires to be exercised in the manner set out in the case *Jenson v Fappiano* (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015 by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case. The Tribunal must consider the facts of each case appropriately.
- 20) In coming to its decision the Tribunal considered and took account of the decision of the Upper Tribunal UTS/AP/19/0020 which states: '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, or other hypotheticals.'

- 21)** The Tribunal considered this to be a serious matter, although not one at the most serious end of the scale. The Respondent was aware of tenancy deposit schemes but thought it was a voluntary scheme. He admitted that he has 3 properties which he has let out over a period of years and has never lodged the deposits but has returned most of the deposits in full. He has advised he takes his responsibilities regarding safety seriously and the Applicant had no complaints to make about the state of the Property. The Respondent has now lodged all current deposits into a scheme and did repay the Applicant her deposit in full at the end of the tenancy.
- 22)** The Applicant is entitled to have confidence that the Respondent would comply with their duties as a landlord and that their tenancy deposit would be protected. Their deposit was unprotected for 2 years, and it is noted that the Respondent had not until recently protected any of the deposits he had taken as a landlord despite being a relatively experienced landlord.
- 23)** However the Tribunal has taken into account that the Respondent has admitted liability, that he has repaid the full deposit immediately at the end of the tenancy, and has advised that he has taken steps to place all current deposits into a scheme.
- 24)** Taking all the circumstances into account, the Tribunal decided it would be fair and just to award a sum of £500 to the Applicant.

### **Decision**

The Tribunal grants an order against the Respondent for payment to the Applicants of the sum of £500.

### **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.

# Jan Todd

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Legal Member/Chair

\_\_8<sup>th</sup>  
Date

February

2024