



**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 (“the Regulations”)**

**Chamber Ref: FTS/HPC/PR/24/0439**

**Re: Property at Gardeners Cottage, Cluny, Inverurie, Aberdeenshire, AB51 7EX (“the Property”)**

**Parties:**

**Miss Caitlin Milne, 39 Morrison Drive, Aberdeen, AB10 7EA (“the Applicant”)**

**Mr Cosmo Linzee Gordon, Cluny Castle, Sauchen, Inverurie, AB51 7RT (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be made in favour of the Applicant in the sum of £750.**

**Background**

1. By application received on 26<sup>th</sup> January 2024 and made under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”), the Applicant applied for an order in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”).
2. The Applicant lodged a copy of the tenancy agreement between the parties that commenced on 28<sup>th</sup> July and ended on 4<sup>th</sup> December 2023, information from the three approved tenancy deposit schemes stating that no tenancy deposit was lodged, and evidence of payment of the deposit, prior to commencement of the tenancy.

## The Case Management Discussion

3. A Case Management Discussion (“CMD”) took place by telephone conference on 21<sup>st</sup> May 2024. Both parties were in attendance. The Applicant was supported by Ms Sweeney.
4. The Respondent confirmed that the tenancy deposit of £750 had not been lodged in an approved tenancy deposit scheme as required by the Regulations.
5. The Applicant said the matter had caused her emotional distress. There had been much emailing back and forth between the parties. The Respondent had tried to charge the Applicant for cleaning and other alleged failures to leave the Property in a good state at the end of the tenancy, without providing any evidence. The Applicant denied any responsibility for these matters. The Applicant was out of pocket for a long time because the tenancy deposit had not been returned. The fact that there was no third party to adjudicate the dispute between the parties at the end of the tenancy was distressing. The Applicant became aware that the tenancy deposit had not been lodged after the tenancy ended, on 5<sup>th</sup> January 2024, after asking the Respondent several times for the details of the tenancy deposit scheme.
6. The Respondent said this was an anomaly that had occurred due to a changeover of staff within the estate office. A junior, temporary member of staff in place at the time of payment of the tenancy deposit was not aware that the deposit had to be lodged in a tenancy deposit scheme. The Respondent said this may have been due to a lack of guidance from him. Responding to questions from the Tribunal, the Respondent said the estate lets fifteen residential properties, managed by a letting agent. The Regulations are normally complied with. The Respondent became aware of the failure in early January 2024. The Respondent accepts the matter caused distress and difficulty to the Applicant.
7. The Tribunal asked both parties if they considered the matter should proceed to an evidential hearing. Both parties indicated a desire to have the matter concluded at the CMD.
8. The Tribunal informed parties that it had the power to order late lodging of the tenancy deposit in an approved tenancy deposit scheme, so that adjudication could take place. The Respondent indicated that he would prefer to waive any further action and stand by his decision (referred to in the conjoined case FTS/HPC/CV/24/0606) to repay the deposit in full.
9. Before hearing from parties on the level of award to be made, the Tribunal referred parties to the following statement from the Upper Tribunal decision, UTS/AP/19/0020:

*‘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.'*

10. The Applicant reiterated her position that she had required her deposit to be repaid in full at the end of the tenancy. She is a single mother and she was required to take out loans to assist with her finances. The Applicant said she was content for the Tribunal to decide on the level of award.
11. The Respondent referred to losses incurred by the estate due to the condition of the Property at the end of the tenancy. The Respondent said he was content for the Tribunal to decide on the level of award.

### **Findings in Fact and Law**

12.
  - (i) The parties entered into a private residential tenancy agreement in respect of the Property that commenced on 28<sup>th</sup> July 2023 and ended on 4<sup>th</sup> December 2023.
  - (ii) A tenancy deposit of £750 was paid to the Respondent by the Applicant at the commencement of the tenancy.
  - (iii) The deposit was not lodged with an approved tenancy deposit scheme within 30 days of the commencement of the tenancy.
  - (iv) The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.

### **Reasons for Decision**

13. The Regulations were put in place to ensure compliance with the tenancy deposit scheme, and to provide the benefit of dispute resolution for parties. 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.
14. The Tribunal took guidance from the decision of the Upper Tribunal UTS/AP/19/0020, as set out above. The Tribunal considered this to be a serious matter, although not one at the most serious end of the scale. The Applicant's deposit was not lodged with an approved tenancy deposit scheme as required by Regulation 3, and remained unprotected for the duration of the tenancy, a period of almost 5 months.
15. The Tribunal accepted the Applicant's submissions that the matter had caused her distress and deprived her of the opportunity of adjudication at the end of the tenancy. However, the Tribunal considered that the main distress

to the Applicant arose from her failure to recover the deposit immediately for use in respect of another tenancy, rather than due to the Respondent's failure to lodge the deposit. The Tribunal noted that the Respondent had offered by email to the Applicant dated 18<sup>th</sup> January 2024 to return the deposit, requesting the Applicant's bank details. The Applicant claimed to have missed this email due to the volume of emails between parties at the time. The Tribunal considered that, had the deposit been lodged with an approved tenancy deposit scheme, and the matter gone to adjudication, given the dispute between the parties, it would have been unlikely to have been resolved any sooner than 18<sup>th</sup> January 2024.

16. The Tribunal took into account the mitigating circumstances put forward by the Respondent, and the fact that there was no attempt by the Respondent to deny responsibility for failing to comply with the Regulations. The Tribunal was unable to take into account any costs for alleged damage or disrepair to the Property at the end of the tenancy, as this was not a matter of agreement between parties.
17. The Tribunal considered that the Respondent is an experienced landlord who ought to have had proper procedures in place to ensure all staff members were aware of the obligation to lodge the tenancy deposit. The Applicant was entitled to have confidence that the Respondent would comply with their duties as a landlord.
18. Taking all the circumstances into account, the Tribunal decided it would be fair and just to award a sum of £750 to the Applicant, which equates to the deposit.

## **Decision**

19. The Tribunal grants an order against the Respondent for payment to the Applicant of the sum of £750 in terms of Regulation 10(a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

## **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/Chair**

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**21<sup>st</sup> May 2024**  
**Date**