



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

**Chamber Ref: FTS/HPC/PR/24/0905**

**Re: 63 Gillbrae Crescent, Georgetown, Dumfries DG1 4DJ (“the Property”)**

**Parties:**

**Rebecca Bradbury, 19 Twiname Way, Heathall, Dumfries DG1 3ST (“Applicant”)**

**James McGarva, 1 Horseclose Cottage, Cummertrees DG12 5PZ (“Respondent”)**

**Tribunal Members:  
Joan Devine (Legal Member)**

**Decision :**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay to the Applicant the sum of £712.50.**

**Background**

1. The Applicant made an application in Form G ("Application") dated 22 February 2024 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("Rules") stating that the Respondent had failed to timeously lodge a tenancy deposit in an appropriate scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("2011 Regulations"). The Applicant produced to the Tribunal a private residential tenancy agreement (“PRT”) between the Applicant and the Respondent which commenced on 21 November 2019. In an email to the Tribunal the Applicant stated that she had vacated the Property on 22 January 2024.
2. A copy of the Application and notification of a Case Management Discussion fixed for 1 July 2024 was given to the Respondent by Sheriff Officer on 30 May 2024.

### **Case Management Discussion ("CMD")**

3. A CMD took place on 1 July 2024 by conference call. The Applicant was in attendance as was the Respondent. Ms Bradbury told the Tribunal that she paid the deposit of £475 on 22 November 2019. Mr McGarva confirmed that was correct. Ms Bradbury said that she served notice to end the tenancy and that it ended on 22 January 2024. Mr McGarva confirmed that was correct. Ms Bradbury said that she telephoned the three tenancy deposit scheme administrators to ask if they held her deposit but none did. Mr McGarva confirmed that the deposit was not lodged in an approved scheme. He said that the deposit was not returned to the Applicant at the end of the tenancy as he had retained the deposit to cover costs he had incurred to rectify damage at the Property.
4. The Tribunal explained the terms of regulations 3 and 10 of the 2011 Regulations. He said that the weekend the Applicant moved into the Property his partner lost their baby at 14 weeks of her pregnancy. Mr McGarva told the Tribunal that he was a farmer. He said that at this point in time there was a lot going on at the farm including calving. He said that with all that was going on he forgot to lodge the deposit. Mr McGarva said that he owns two rental properties (including the Property) and that he lodges deposits taken with Safe Deposits Scotland. He said there are also two farm cottages on his farm which are rented but his solicitor deals with them. He said he had been a private landlord since around 2010.
5. Ms Bradbury asked the Tribunal to award compensation three times the deposit. Mr McGarva said that it seemed unfair to make an award when he had incurred costs carrying out repairs at the end of the tenancy.
6. The Tribunal noted that the following was agreed : the tenancy commenced on 21 November 2019 and ended on 22 January 2024; the Applicant paid a deposit of £475 to the Respondent on or about 22 November 2019; the deposit was not returned to the Applicant at the end of the tenancy and the deposit was not placed in an approved scheme.
7. The Tribunal expressed the view that it had sufficient information to proceed to make a decision without the need for a further Hearing. The Parties stated that they were content for the Tribunal to make a decision on the basis of the information presented.

## **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement which commenced on 21 November 2019.
2. The tenancy came to an end on 22 January 2024.
3. The Applicant paid to the Respondent a deposit of £475 on or about 22 November 2019.
4. The deposit was not paid to the administrator of an approved scheme in compliance with the 2011 Regulations.
5. The Applicant was unable to utilise the dispute resolution procedure offered by approved tenancy deposit schemes in order to seek return of the deposit.

## **Findings in Fact and Law**

6. The Respondent breached Regulation 3 of the 2011 Regulations.

## **Relevant Legislation**

8. Regulation 3 of the 2011 Regulations provides *inter alia* :  
  
"(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
9. Regulation 10 of the 2011 Regulations provides *inter alia* :  
  
"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"

## **Reasons for the Decision**

10. Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme

administrator of an approved scheme within 30 working days of the beginning of the tenancy, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. It was a matter of admission that the Respondent did not lodge the deposit with an approved scheme.

11. The amount to be awarded is a matter for the discretion of the Tribunal having regard the factual matrix of the case before it. The Tribunal considered the comments of Sheriff Ross in *Rollett v Mackie* UTS/AP/19/0020. At para 13 and 14 he considered the assessment of the level of penalty and said:

*"[13] In assessing the level of a penalty charge, the question is one of culpability, and the level of penalty requires to reflect the level of culpability. Examining the FtT's discussion of the facts, the first two features (purpose of Regulations; deprivation of protection) are present in every such case. The question is one of degree, and these two points cannot help on that question. The admission of failure tends to lessen fault: a denial would increase culpability. The diagnosis of cancer also tends to lessen culpability, as it affects intention. the finding that the breach was not intentional is therefore rational on the facts, and tends to lessen culpability.*

*[14] 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. None of these aggravating factors is present."*

12. Mr McGarva admitted his failure to comply with the 2011 Regulations. He said that he failed to lodge the deposit in an approved scheme as it slipped his mind due to issues in his personal life and work. He was aware of the need to lodge a deposit in an approved scheme and had done so for other tenancies where he is the landlord. The admission of fault and the loss of Mr McGarva's first child lessen culpability. However, as the deposit was not lodged in an approved scheme the Applicant was deprived of the opportunity to approach the scheme administrator regarding return of the deposit. In these circumstances the purpose of the 2011 Regulations was defeated. This also meant that the Applicant required to apply to the Tribunal to seek recovery of the deposit. Taking all matters into account the Tribunal considered that it would be appropriate to make an award of compensation around the mid-point of the scale. The Tribunal determined that the sanction should be £712.50 (being 1.5 times the deposit) in the particular facts and circumstances of this case.

## **Decision**

The Tribunal granted an Order for payment of £712.50 in terms of Regulation 10(a) of the 2011 Regulations.

### **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.**

J. Devine

**Joan Devine  
Legal Member**

**Date: 1 July 2024**