



**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 (the 2011 Regulations)**

**Chamber Ref: FTS/HPC/PR/24/1388**

**Re: Property at 1/1 24 Kirkintilloch Road, Bishopbriggs, G64 2AL (“the  
Property”)**

**Parties:**

**Mr George Stevenson, 1/1 24 Kirkintilloch Road, Bishopbriggs, G64 2AL (“the  
Applicant”)**

**Mr Stephen Anderson, 32 Moncrieff Avenue, Kirkintilloch, G66 4NJ (“the  
Respondent”)**

**Tribunal Members:**

**Yvonne McKenna (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that:-**

- 1. An order for payment is made in favour of the Applicant due by the  
Respondent in the sum of £2100 (TWO THOUSAND ONE HUNDRED  
POUNDS).**
- 2. An order be made in terms of Regulation 10 (b) of the 2011 Regulations  
ordering the Respondent to pay the deposit into an approved scheme**

**Background and Documents Lodged**

- 1. The Applicant made an application in Form G ("Application") dated and  
lodged on 21 January 2024 under Rule 103 of the First-tier Tribunal for  
Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the  
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").

2. The documents produced to the Tribunal by the Applicant were:
  - Copy screenshot from a page of the Applicant's bank account showing a payment made to the Respondent on 13 May 2019 of £1130.
  - Copy emails from Safe Deposits Scotland, Mydeposits Scotland and Letting Protection Scotland all dated 28 March 2024 all stating that the Property deposit was not protected under any of these schemes.
3. The Application was accepted by the Tribunal on 3 April 2024.
4. The application and relevant paperwork were served on the Respondent by Sheriff Officers on 14 May 2024.
5. The Respondent lodged written representation on 4 June 2024 which included the following:-
  - A private residential tenancy agreement ("PRT") between the Applicant and the Respondent which is undated and states that the start date is to be confirmed
  - Notice to Leave dated 21 March 2024.

### **The Case Management Discussion**

6. A Case Management Discussion ("CMD") took place on 19 June 2024 by teleconference. The Applicant was in attendance supported by his sister Ms Deborah Stevenson. The Applicant was represented by Mr Raymond Heath from East Dunbarton, Citizens Advice Bureau.
7. When the CMD commenced the Respondent was not in attendance, and was not represented. The Legal Member asked the Clerk to send the Respondent an e-mail (as the Tribunal did not have a contact telephone number for the Respondent), providing the Respondent with the dial in details for the CMD, and explaining that the CMD was progressing.
8. At 2.10pm the Tribunal then proceeded.

9. The Respondent joined the conference call at 2.20pm. He apologised and said that he had difficulties getting through to join the call. He had not, however, been in touch with the Tribunal by phone or e-mail to explain his difficulties in attending prior to this time.
10. The Applicant's position was that having received the representations from the Respondent that he accepted that the initial payment which had been made on 13 May 2019 amounted to the first month's rent payment along with a deposit of £700. Mr Heath moved to amend his application to reduce the sum claimed therefore to £2100. There was no opposition to this application.
11. The Applicant and the Respondent were both in acceptance that the PRT had a start date of 13 May 2019. They were both in agreement that the tenancy was ongoing and that the Respondent continued to occupy the Property. They were also both in agreement that the deposit remained unprotected at the date of the CMD. This was accepted by the Respondent. Parties were asked by the Legal Member if it would assist in any way for them to have a direct dialogue. This was not something which Mr Heath felt would assist matters. There was no indication that there were any material factors were in dispute regarding the application before the Tribunal, and parties saw no requirement for the case to proceed to a full Hearing. They were content that the Tribunal consider matters as at the date of the CMD, and to determine matters based on their positions as set forward in their written and oral representations.
12. Mr Heath invited the Tribunal to grant an order for payment in the sum of £2100. He said that it had been conceded that the deposit remained unprotected. The deposit has been unprotected since 2019- a period of over 5 years. He also invited the Tribunal to make an Order in terms of Regulation 10 (b) of the 2011 Regulations ordering the Respondent to make payment of the deposit for the Property into an approved scheme. He pointed out that it was not for anyone to advise or explain to the Respondent that he had duties and responsibilities a private landlord and that on being registered he would have received an information pack from the local authority with certain information including that pertaining to the 2011 Regulations.
13. The Respondent appeared quite belligerent that he had not been made aware by anyone that the deposit needed to be placed into an approved scheme and that the first that he had been aware of this was when the paperwork was served on him. The Legal Member pointed out that the 2011 Regulations were implemented a considerable time before the tenancy between the parties commenced in 2019. The Respondent was unable to state why the deposit remained unprotected at the date of the CMD. He suggested that the application was only being made as issues had arisen during the tenancy. He stated that Notice to Leave had now been served and that there were arrears

of rent. He accepted that there were no other cases involving the Property currently before the Tribunal. He said that he could not understand why he was being asked to make a payment of three times the deposit. He was unapologetic with regards to his duties and responsibilities as a landlord with regard to the 2011 Regulations.

14. In relation to his own circumstances the Respondent said that he rented out only one property, which was the Property, and that he was registered as a private landlord with East Dunbarton Council.
15. Both parties proceeded to inform the Tribunal regarding ancillary matters including rent allegedly being due, and a door that wouldn't lock, and damage perceived to have been occasioned within the Property. The Tribunal noted that all of these matters were in dispute and do not form part of the Tribunal's consideration in respect of this action.

### **Findings in Fact**

16. (i) The parties entered into a private residential tenancy agreement in respect of the Property that commenced on 13 May 2019 and is ongoing
- (ii) A tenancy deposit of £700 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 deposit at the date of the CMD had not been lodged with an approved tenancy deposit scheme.
- (v) The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.

### **Reasons for Decision**

17. 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. It was a matter of admission that the deposit remains unprotected.

18. The amount to be awarded is a matter for the discretion of the Tribunal having regard to 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."*

19. The Tribunal noted that the Respondent has only one property which he rents out. He could not be described as an experienced landlord. There was no evidence of multiple lettings and multiple breaches of the 2011 Regulations. The Tribunal was of the view that there was no evidence of fraudulent intent on the part of the Respondent.

20. On the other hand, the Respondent took minimal responsibility for the fact that he had failed to lodge the deposit into an approved scheme and suggested that this ought to have been brought to his attention at an earlier stage by "someone". The deposit remains unprotected. It has been unprotected for a not insignificant period, just over 5 years.

21. The explanation given for the failure to comply with the 2011 Regulations was lack of awareness of the Regulations. Ignorance of the law is not an excuse for non-compliance. The Applicant was entitled to have confidence that the Respondent would comply with his duties as a landlord. The Respondent's position was very much a reckless failure to observe his responsibilities.

22. Once the 2011 Regulations had been pointed out to the Respondent the Tribunal would expect a reasonable landlord to take steps to ensure that the deposit was protected. The Respondent had failed to do so. There was no reason provided by the Respondent as to why he had failed to do so other than a suggestion that rent remains due and outstanding, and a suggestion

that the Property has been damaged by the Applicant. These are matters which are in dispute by the Applicant and are the very issues which give rise to the fact that the deposit requires to be protected. The Tribunal regard this as a serious matter.

23. Taking all the circumstances into account, the Tribunal regard this as a serious breach of the 2011 Regulations, and decided it would be fair and just to award a sum of £2100 to the Applicant, which equates to three times the deposit.

24. In addition in terms of Regulation 10 (b) of the 2011 Regulations the Tribunal requires to order that the Respondent pays the deposit into an approved scheme, given that the deposit remains unprotected.

### **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.**

Yvonne McKenna

19 June 2024

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**Legal Member/Chair**

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**Date**