



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) and Rules 17 and 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).**

**Chamber Ref: FTS/HPC/PR/23/2909**

**Re: 43/2 Arden Street, Marchmont, Edinburgh, EH9 1B (“the Property”)**

**Mr Findlay McLean, 26/1 Leven Street, Tollcross, Edinburgh, EH3 9LJ**

**Mr Callum Findlay, 26/1 Leven Street, Edinburgh, EH3 9LJ.**

**Mr Callum Elliot, 70 Seafield Road, Broughty Ferry, Dundee, DD5 3AQ,**

**Mr Noah Henry, 16 Tor View, Contin, IV14 9EE (“the Applicants”)**

**Mr James D.E Thompson Little Hampden Lodge, Hampden Great Missenden, BUCKS, HP16 9PS (“the Respondent”) per his agents Lewis Residential, 37, St. Steven Street, Edinburgh EH2 5AH (“the Respondent’s Agents”)**

**Tribunal Members:**

**Karen Moore (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), having found that the Respondent did not comply with Regulation 3 of the Regulations, determined that an Order for Payment in the sum of EIGHT THOUSAND SEVEN HUNDRED AND THIRTY POUNDS (£8,730.00) Sterling be granted.**

**Background**

1. By application received between 23 August 2023 and 8 September 2023 (“the Application”), the Applicants applied to the Tribunal for an Order in terms of Regulation 10 of Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”).

2. The Application comprised the following:
  - i) a copy of a tenancy agreement between three of the Applicants and another person and the Respondent's then letting agents with a start date of 4 June 2021 and showing that a tenancy deposit of £2,910.00 was payable at the start date and
  - ii) copy tenancy deposit scheme screen shot showing a deposit of £2,910.00 lodged on 23 July 2023 and noting a tenancy start date of 5 September 2022.
3. The Application sought the maximum Order of three times the amount of the deposit. The Application was accepted by the Tribunal and a Case Management Discussion (the "CMD") was fixed for 24 November 2023 at 14.00 by telephone conference and intimated to the Parties.

#### **First CMD**

4. The CMD took place on 24 November 2023 at 14.00 by telephone conference by telephone. All four Applicants took part and were not represented. The Respondent did not take part and was represented by Mr. Baker of the Respondent's Agents.
5. The outcome of the First CMD was that it was adjourned to a later date for the Applicants to provide a copy of their tenancy agreement and proof of payment of the deposit and for the Respondent or his agent to provide proof of when the deposit was received in respect of the Applicants' tenancy and when it was lodged with an approved scheme.

#### **Second CMD**

6. The Second CMD took place on 21 March 2024 at 10.00 by telephone conference by telephone. Mr. McLean, Mr. Elliot and Mr. Henry took part and were not represented, Mr. Findlay, having notified the Tribunal that he could not attend. The Respondent did not take part and was represented by Mr. Baker of the Respondent's Agents.
7. The Tribunal recapped on the previous CMD and noted that no further information had been submitted. The Applicants advised that they thought that had submitted their tenancy agreement around December 2023. Mr. Baker advised that he had struggled to obtain the information on where and when the deposit was held from previous agents.
8. The Tribunal advised that it still did not have sufficient information in respect of when the deposit was paid, when it was lodged and when it was re-lodged to determine if there was a breach of Regulation 3 and, if so, how much an Order in terms of Regulation 10 should be made.

9. On behalf of the Respondent, Mr. Baker explained that he had email correspondence indicating that the deposit had been lodged with My Deposit Scotland and was later transferred to the Letting Protection Scheme which he could produce.
10. The Tribunal explained to the Applicants that the onus was on them to prove that the deposit had not been lodged with an approved scheme and the way to do this was to contact each scheme and ask if and when the deposit had been lodged.

### **Direction**

11. The Tribunal issued the following Direction to guide the Parties on the information required:

“The Applicants are required to contact each of the undernoted Tenancy Deposit approved scheme providers to ascertain if and when their tenancy deposit of £2,910.00 was lodged in respect of the tenancy agreements for the Property which commenced on 4 June 2021 and 5 September 2022:

- i) [www.tenancydepositscheme.com](http://www.tenancydepositscheme.com)
- ii) [www.mydepositsscotland.co.uk](http://www.mydepositsscotland.co.uk)
- iii) [www.lettingprotectionscotland.com](http://www.lettingprotectionscotland.com)

The Respondent is required to provide a copy of the tenancy agreement between the Parties which commenced on 5 September 2022 and copies of the correspondence between his letting agents which deal with the transfer of the Applicants’ tenancy deposit between the approved schemes.”

12. The Applicants complied with the Direction and submitted correspondence from Letting Protection Scotland (LPS) that LPS were aware that a deposit had been taken but had not been deposited with LPS and that LPS had contacted the Respondent’s Agents regarding the deposit without success.
13. The Respondent did not comply with the Direction.

### **Third CMD**

14. The CMD took place on 23 July 2024 at 10.00 by telephone conference by telephone. Mr. McLean, Mr. Elliot and Mr. Findlay of the Applicants took place Henry took part and were not represented. Mr. Henry did not take part and was not. The Respondent did not take part and was not represented. He did not submit written representations.
15. The Tribunal was satisfied that the Respondent via the Respondent’s Agents was aware of the CMD and so proceeded in his absence.

16. On behalf of the Applicants, Mr. Findlay confirmed to the Tribunal that the Order sought is for the maximum amount allowed and confirmed that the tenancy deposit of £2,910.00 had not been paid into a statutory approved scheme and that the Respondent had not provided the Applicants with information on the deposit, all in terms of Regulations 3 and 42 of the Regulations.
17. The Tribunal noted that there had been no further response from the Respondent and, in particular, had been no response from the Respondent in respect of the claim for a maximum award.

### **Findings in Fact**

18. From the Application and the CMD, the Tribunal made the following findings in fact: -
- i) There had been a tenancy of the Property between the Parties at a monthly rent of £1,950.00;
  - ii) The tenancy began on or around 1 October 2022 and ended around mid-July 2023;
  - iii) There had been a previous tenancy between three of the Applicants and another party;
  - iv) A tenancy deposit of £2,910.00 was paid by the Applicants to the Respondent's then agents in respect of that tenancy;
  - v) The tenancy deposit was transferred to the Respondent's Agents prior to January 2023;
  - vi) The tenancy deposit was not lodged with an approved scheme until 23 July 2023 and no information on the deposit was provided to the Applicants by the Respondent and
  - vii) The Respondent is in breach of Regulation 3 of the Regulations.

### **Decision**

19. Having made those findings, the Tribunal had regard to Regulation 10(a) of the Regulations which states that, if satisfied that the landlord did not comply with any duty in Regulation 3 the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. The Tribunal consider the breach of Regulation 3 by the Respondent to be significant and, given the amount of the deposit at risk, at the extreme end of the penalty scale. The Tribunal, having had no comment from the Respondent in respect of the amount of the award which should be made, the Tribunal took the view it was reasonable that the maximum amount should be awarded to the Applicants.

20. The Tribunal then had regard to Rule 17(4) of the Rules which states that the Tribunal “may do anything at a case management discussion .....including making a decision” and so proceeded to make an Order for Payment in the sum of £8,730.00.

## **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.**

Karen Moore

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**Legal Member/Chair**

**23 July 2024**

**Date**