



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 3 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/24/0922**

**Re: Property at 21/6 Stead's Place, Edinburgh, EH6 5DY (“the Property”)**

**Parties:**

**Mrs Rukayat Iyanda, Flat 12, 10 Hawkhill Close, Edinburgh, EH7 6FG (“the Applicant”)**

**Shovakhar Gautam, 4 Bannerman Terrace, Edinburgh, EH17 8NF (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be made.**

1. The Applicant lodged an application on the 26<sup>th</sup> February 2024 under Rule 103 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) seeking a sum under the Tenancy Deposit (Scotland) Regulations 2011 (“the Regulations”).
2. Lodged with the application were :
  - a. Tenancy Agreement
  - b. Email from Safe Deposits Scotland confirming the deposit was not lodged with them until 16<sup>th</sup> January 2024
  - c. Email from Safe Deposits Scotland dated 7<sup>th</sup> March 2024 confirming that they had received a repayment request from the respondent on 17<sup>th</sup> January 2024 and returned the deposit to the Respondent after 30 days because the Applicant had not responded

3. The papers were served on the Respondent by Sheriff Officers on 14<sup>th</sup> June 2024.
4. On 2<sup>nd</sup> July 2024 the Tribunal received an email from the Respondent's solicitor containing a Written Submission, which confirmed that the deposit had not been placed in a Scheme until 16<sup>th</sup> January 2024 and went on to say that the property had been left in a mess and the deposit had been returned in full by the tenancy deposit scheme as the Applicant had not engaged in the process.

### **Case Management Discussion**

5. The Case Management Discussion ("CMD") took place by teleconference. The Applicant represented herself. The Respondent did not call in and was not represented. The Written Submissions did not say that no one would appear, and the Clerk telephoned the solicitor's office. The solicitor was not available.
6. In terms of Rule 29 of the Rules the Chairperson was satisfied that the Respondent had sufficient notice of the CMD and that she had enough information to allow her to proceed in the absence of the Respondent.
7. The Chairperson introduced and explained to the Applicant the purpose of a CMD in terms of Rule 17.
8. The Chairperson ascertained from the Applicant that she had moved in to the property on 11<sup>th</sup> March 2023 and moved out on 16<sup>th</sup> January 2024. She paid a deposit of £1400 at entry.
9. The Applicant confirmed that she had brought the Application because her deposit had not been placed in an approved scheme within the statutory time limit. She accepted that it had been placed in a scheme, but only after she had asked the Respondent about it, and only after she had left the tenancy.
10. The Applicant did not have any information about the Respondent and did not know if he rented out any other properties.
11. The Applicant said that she had not received any correspondence from the deposit scheme regarding the Respondent's request for the deposit to be returned to him.

### **Findings In Fact**

- i. The parties entered into a tenancy agreement for the property commencing on 11<sup>th</sup> March 2023;
- ii. The Applicant paid a deposit of £1400 to the Respondent;
- iii. The Applicant vacated the property on 13<sup>th</sup> January 2024;
- iv. The Applicant contacted the Respondent about the deposit;

- v. The Respondent placed the deposit in to a scheme with Safe Deposits Scotland on 16<sup>th</sup> January 2024.

## Reasons For Decision

12. The Application has been brought under the Tenancy Deposit (Scotland) Regulations 2011, based on an alleged failure of the Respondent of their duties under Regulation 3, and seeking a payment in terms of Regulation 10.

13. Regulation 3 is as follows:

*3.—(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; and*

*(b) provide the tenant with the information required under regulation 42.*

*(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.*

*(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—*

*(a) in respect of which the landlord is a relevant person; and*

*(b) by virtue of which a house is occupied by an unconnected person,*

*unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.*

*(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.*

14. Regulation 10 is as follows:

*10. 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; and*

*(b) may, as the First-tier Tribunal considers appropriate in the circumstances of the application, order the landlord to—*

- (i) pay the tenancy deposit to an approved scheme; or*
- (ii) provide the tenant with the information required under regulation 42.*

14. There was no dispute about the material facts. It was accepted by the Respondent that the Applicant paid a deposit of £1400 and that it was not lodged in a scheme until 16<sup>th</sup> January 2024. The written submission on behalf of the respondent described this as a “mistake”.
15. Regulation 3 imposes an obligation on a landlord who has received a tenancy deposit in connection with a relevant tenancy and the obligation is to place it in to an approved scheme within 30 working days of the beginning of the tenancy.
16. The Tribunal has discretion in deciding what the Respondent should be ordered to pay. Serial offenders, i.e. landlords with multiple properties who do not place deposits in schemes are at the upper end of the scale. Landlords with only one property who have made a mistake are at the lower end of the scale. Renting out a property is a commercial decision/running a business, and there are laws and regulations in place to protect parties who enter into tenancy agreements. These must be complied with. The reasons for the Regulations are to protect the tenant’s deposit, as the money belongs to the tenant, and also to provide a fair and impartial mechanism for adjudicating on whether a deposit should be returned to a tenant, or some or all be retained by the landlord. The Tribunal has power to award a sum equivalent to up to three times the amount of the deposit.
17. The Tribunal considers this case at the lower end of the scale. There is no suggestion that the Respondent is a serial offender. The deposit was deposited in a scheme, albeit after the end of the tenancy. However, the deposit has been unprotected for the entire duration of the tenancy. The Respondent should have been aware of his obligations as a landlord, and been careful about ensuring they were met. The Tribunal considers that an award of £1400 is appropriate.

## **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.

# A. Kelly

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Legal Member/Chair

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Date 19<sup>th</sup> July 2024