



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

**Chamber Ref: FTS/HPC/PR/24/1505**

**Re: Property at 7F Roxburgh Way, Greenock, PA15 4LN (“the Property”)**

**Parties:**

**Miss Heather Burnside, 63 Bow Road, Greenock, PA16 7DY (“the Applicant”)**

**Hayley Slater, 65, Killochend Drive, Greenock, PA15 4EW (“the Respondent”)**

**Tribunal Members:**

**Nicola Irvine (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order for payment against the Respondent in favour of the Applicants in the sum of £550.**

**Background**

1. The Applicant submitted an application under Rule 103 for an order for payment on the basis that it was said that the Respondent had failed to comply with the Tenancy Deposit Schemes (Scotland) Regulations 2011.
2. By decision dated 12 April 2024, a Convenor of the Housing and Property Chamber having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).
3. The Tribunal issued letters on 17 June 2024 informing both parties that a case CMD had been assigned for 26 July 2024 at 10am, which was to take place by conference call. In that letter, the parties were also told that they were required to take part in the discussion and were informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and considers the procedure to have been fair. The Respondent was invited to make written representations by 8 July 2024.

4. The Tribunal received an email from the Respondent on 5, 10 and 18 July 2024, setting out her position. The Respondent lodged an application for a time to pay direction, to be considered in the event of an order being granted.

### **The case management discussion**

5. The Applicant was represented by Mr Ben Stevenson and the Respondent represented herself. The CMD which took place by conference call. This case called alongside a related case which proceeds under chamber reference FTS/HPC/CV/24/1563. The Tribunal explained the purpose of the CMD and then noted that a number of matters were not in dispute, namely:
  - a) The tenancy started on 16 December 2019;
  - b) The tenancy ended on 16 January 2024;
  - c) The Applicant paid a deposit of £375 to the Respondent at the outset of the tenancy;
  - d) The Respondent did not secure the deposit in an approved scheme;
6. The Respondent explained that the Property is still owned by her and rented out. This is the only rental property owned by the Respondent and she has rented it since 2015. The tenancy was previously managed by an agent but when the Applicant rented the property, the Respondent managed the tenancy herself. Tenant deposits were previously managed by the Respondent's agent. She explained that when the Applicant's tenancy started, she set up an account with an approved scheme but overlooked lodging the Applicant's deposit in that scheme. The Respondent explained that she has incurred costs in effecting repairs at the Property following the Applicant's departure. The Respondent has made a claim for payment against the Applicant but that has not yet been determined by the Tribunal.
7. The Applicant's representative moved for the maximum compensation in respect of the Respondent's failure to comply with the Tenancy Deposit Schemes (Scotland) Regulations 2011.
8. The Tribunal noted that there was no material factual dispute between the parties. A Hearing was not required to determine the present application.
9. The Tribunal discussed the Respondent's application for a time to pay direction. The income disclosed on the application does not include rental income and the Respondent did not wish that disclosed to the Applicant. It was noted that the Applicant's expenditure far exceeds her income.

### **Findings in Fact**

10. The parties entered into a private residential tenancy which commenced 16 December 2019.
11. The Applicant paid a deposit of £375 to the Respondent at the outset of the tenancy.

12. The Respondent failed to pay the Applicant's deposit to an administrator of an approved scheme.
13. The Respondent failed to comply with her duty in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") in respect that the deposit paid by the Applicant was not paid to an administrator or an approved scheme within 30 working days as required.

### **Reason for Decision**

14. The Tribunal proceeded on the basis of the written documents which were before it and the information provided by the parties at the CMD. The Respondent accepted her failure to comply with the 2011 Regulations. The Applicant's deposit was unprotected for the whole of the tenancy. The Property is the only property let out by the Respondent.
15. The Regulations exist to protect a tenant's deposit and to provide the benefit of dispute resolution, if required.
16. The terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 are mandatory and state *"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."*
17. The Tribunal was satisfied that the Respondent failed to comply with her duties in terms of that regulation. It was the Respondent's duty to pay the deposit to the scheme administrator within 30 working days and she failed to do that. The Tribunal was mindful that the deposit has not been repaid by the Respondent.
18. The Tribunal considered that its discretion in making an award requires to be exercised in a manner consistent with the case *Jenson v Fappiano (Sheriff Court) (Lothian & Borders, Edinburgh) 28 January 2015*. It must be fair, just and proportionate and informed by taking account of the particular circumstances of the case.
19. The Tribunal considered the decision of the Upper Tribunal (UTS/AP/19/0020) which states: *"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."*

20. The Tribunal considered that the present case is not the most serious of breaches of the Regulations and an appropriate sanction for failure to comply with the duties was to order the Respondent to pay the Applicant £550.

21. In relation to the Respondent's application for a time to pay direction, the statement of income and expenditure disclosed did not include all of the Respondent's income. On the face of it, the Respondent cannot afford to pay instalments of £100 per month and the Tribunal therefore refused the application for a time to pay direction.

### **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.**

# Nicola Irvine

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Legal Member/Chair

**26 July 2024**  
Date