



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/24/1759**

**Re: Property at 34 Springfield Road, Airdrie, ML6 7DP (“the Property”)**

**Parties:**

**Mrs Kerryanne McDermott, 63 Arranview Street, Chapelhall, Airdrie, ML6 8XN (“the Applicant”)**

**Mr Tom Roy, 50 Airdrie Road, Caldercruix, Airdrie, ML6 8PA (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the respondent to the Applicant in the sum of £1100.00**

**Background**

1. By application dated 18 April 2024 the Applicant applied to the Tribunal for an order under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicant submitted a copy of a tenancy agreement together with correspondence between the parties and emails from three approved tenancy deposit schemes in support of the application.
2. By Notice of Acceptance dated 24 April 2024 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 12 July 2024.

4. By email dated 31 July 2024 the Respondent submitted written representations to the Tribunal.

### **The Case Management Discussion**

5. A CMD was held by teleconference on 15 August 2024. The Applicant attended in person. The Respondent did not attend nor was he represented. The Tribunal being satisfied that proper intimation of the date and time of the CMD having been given to the Respondent determined to proceed in his absence.
6. The Tribunal noted that the Applicant had submitted with her application a tenancy agreement that was not in the standard form of a Private Residential Tenancy. It purported to be a lease for a period of one year commencing on 11 December 2020 at a rent of £550.00 per month
7. . The Applicant advised the Tribunal that at the commencement of the tenancy there had been no issues but after some time there had been problems with mould in the property and there had been a leak caused by an upstairs neighbour who was also a tenant of the Respondent. The Applicant said that the Local Authority had become involved and the Respondent had been told to carry out work to bring the property and other properties up to the tolerable standard. The Applicant said that subsequently she had been advised that her deposit ought to have been placed in an approved tenancy deposit scheme and had contacted the Respondent and had been told the deposit was in the Respondent's own scheme.
8. The Applicant confirmed that she had decided to end the tenancy and had given notice and the tenancy had ended on 31 May 2024. The Tribunal noted that the Applicant had submitted her application to the tribunal on 18 April 2024. In response to a query from the Tribunal the Applicant said that the Respondent had retained the deposit and had provided a list of reasons for the retention. The Applicant said she had not yet decided whether she was going to make a further application to the Housing and Property Chamber for the return of her deposit.
9. The Tribunal noted that it was accepted by the parties that the deposit had never been paid by the Applicant into a Tenancy Deposit Scheme. The Tribunal also noted that the tenancy ended on 31 May 2024 and that as the Application to the Tribunal had been made on 18 April 2024 the application was timeous.
10. The Tribunal noted from the Respondent's written representations that he had been unaware of the need to lodge tenant's deposits in an approved tenancy deposit scheme and that he now used letting agents to ensure compliance.
11. The Applicant said she was aware that the Respondent had at least three let properties.

### **Findings in Fact**

12. The parties entered into a Private Residential Tenancy Agreement that commenced on 11 December 2020.
13. The Applicant paid a deposit of £550.00 to the Respondent at the commencement of the tenancy.
14. The Respondent failed to lodge the Applicant's deposit in an approved scheme in accordance with Regulation 3 of the 2011 Regulations.
15. The Tenancy ended on 31 May 2024.
16. The Applicant applied to the Tribunal under Regulation 9 of the 2011 Regulations on 18 April 2024.
17. The application is timeous.

### **Reasons for Decision**

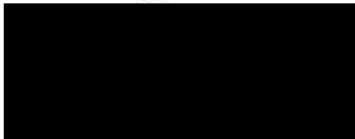
18. It was not disputed that the Respondent was in breach of Regulation 3 of the 2011 Regulations and that the application was timeous. Regulation 10 of the 2011 Regulations provides that where there has been a breach of Regulation 3 and Regulation 9 has been satisfied, the Tribunal must impose a sanction of up to three times the deposit paid by the Tenant. Any award under Regulation 10 is required to reflect a sanction which is fair, proportionate and just given the circumstances (*Jensen v Fappiano* 2015 GWD 4-89). In *Tenzin v Russell* 2015 House. L.R. It was held that any payment in terms of Regulation 10 is the subject of judicial discretion after careful consideration of all the circumstances.
19. The Tribunal has taken into account that the Applicant's deposit remained unprotected for a period of almost three and a half years and that the Applicant has been deprived of the opportunity of having the return of the deposit adjudicated upon under the tenancy scheme rules. The Respondent has submitted that he was unaware of the need to place the Applicant's deposit in an approved scheme but from the information provided even although the Respondent was responsible for letting the property himself, he ought to have been aware of the regulations which have been in force for many years. The Respondent had more than one rental property at the time in question as the Tribunal was satisfied from the Applicant's submissions that the Respondent also owned the property above her property. The regulations were introduced to protect tenants' deposits and it is important that landlords comply with them. This is a serious breach, the Applicant's deposit was unsecured throughout the tenancy. Therefore, in the circumstances the Tribunal considers that an award of two times the deposit is an appropriate sanction to impose. The Tribunal shall therefore award the Applicant the sum of £1100.00.

## **Decision**

22 The Tribunal being satisfied it has sufficient information before it to make a decision without the need for a hearing finds the Applicant entitled to an order for payment by the Respondent to the Applicant in the sum of £1100.00.

## **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.**

  
**Graham Harding**  
**Legal Member/Chair**

**15 August 2024**  
**Date**