



**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/24/0492

**Re: Property at 10 Wardlaw Drive, Glencaple, Dumfries, DG1 4QX (“the
Property”)**

Parties:

**Mr John Anderson, Mr Helen Anderson, 6 Meadowfoot Gardens, Ecclefechan,
Lockerbie, Dumfries and Galloway, DG11 3EW (“the Applicants”)**

**Mr Douglas Anderson, Mrs Margaret Anderson, Hillberry, Glencaple, Dumfries,
DG1 4RD (“the Respondents”)**

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondents)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Applicants were entitled to an order for payment
by the Respondents to the Applicants in the sum of £1113.75.**

Background

1. By application dated 29 January 2024 the Applicants applied to the Tribunal for an order under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicants submitted a copy of two tenancy agreements together with correspondence from the Respondents and emails from three approved tenancy deposit schemes in support of the application.
2. By Notice of Acceptance dated 2 February 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 Respondents by Sheriff Officers on 22 March 2024.
4. By letters dated 25 and 27 March and 8 and 15 April 2024 the Respondents submitted written representations to the Tribunal and also requested the CMD be held in person at Glasgow Tribunals Centre. Having considered the request for an in-person CMD and obtained the views of the Applicants in attending at Glasgow Tribunals Centre detailed in their written representations dated 22 April 2024 the Tribunal determined to postpone the CMD to a further teleconference CMD on a date when the Respondent Mrs Margaret Anderson would be available to attend. The Tribunal also advised the parties that the application might be determined on written representations if necessary.
5. The Respondents submitted further written representations by email on 25 April 2024.

The Case Management Discussion

6. A CMD was held by teleconference on 15 August 2024. The Applicants attended in person. The Respondents did not attend nor were they represented. The Tribunal being satisfied that proper intimation of the date and time of the CMD having been given to the Respondents determined to proceed in their absence.
7. The Tribunal noted that the Applicants had submitted with their application two tenancy agreements. The first purported to be a lease for a period of five years commencing on 1 January 2019 and ending on 31 December 2023 and the second was a Private Residential Tenancy agreement commencing on 1 August 2019. Mrs Anderson explained that the Respondents were directors of a property investment company Anman Limited as was their son Graeme Anderson. She said that Graeme Anderson had pointed out some months after the first lease had been signed that it was in the wrong form and had produced the new lease which they had signed. The Tribunal noted that the new tenancy agreement referred to the deposit being lodged with My deposits Scotland Limited. Mrs Anderson went on to say that following the letter from the Applicants asking to end the tenancy the Applicants had decided just to leave although they were aware of their rights as they no longer wished to remain in the property. Mrs Anderson confirmed that the tenancy had ended on 7 November 2023. She agreed that the Applicants had not been asked to pay the last week's rent and she said she had not asked for the return of the deposit as she was sure that the Respondents would not agree to it being returned but had contacted the three approved tenancy deposit schemes to check that the deposit had not been lodged with any of them.
8. The Tribunal noted that it was accepted by the parties that the deposit had never been paid by the Applicants into a Tenancy Deposit Scheme. The Tribunal also noted that the tenancy ended on 7 November 2023 and that as

the Application to the Tribunal had been made on 29 January 2024 the application was timeous.

9. The Tribunal noted from the Respondents written representations that they had not asked previous tenants to pay a deposit and that they were unaware of the need to place the deposit in an approved scheme and that the Applicants were aware of that fact. The Tribunal also noted that the Respondents had submitted with their written representations information regarding the condition of the property at the end of the tenancy.

Findings in Fact

10. The parties entered into a Private Residential Tenancy Agreement that commenced on 1 January 2019.
11. The Applicants paid a deposit of £495.00 to the Respondents at the commencement of the tenancy.
12. The parties signed a Private Residential Tenancy Agreement on 5 August 2019.
13. The said agreement made provision for the Applicants' deposit to be lodged with My deposits Scotland Limited.
14. The Respondents 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 7 November 2023.
16. The Applicants applied to the Tribunal under Regulation 9 of the 2011 Regulations on 29 January 2024.
17. The application is timeous.
18. The Respondents did not obtain a deposit from previous tenants of the property.
19. The Respondents were until 1 December 2022 directors of a property letting company Anman Limited.

Reasons for Decision

20. It was not disputed that the Respondents were 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.

21. The Tribunal has taken into account that the Applicants' deposit remained unprotected for a period of almost 5 years and that the Applicants have been deprived of the opportunity of having the return of the deposited adjudicated upon under the tenancy scheme rules. The Respondents have submitted that they were unaware of the need to place the Applicants' deposit in an approved scheme but the Private Residential Tenancy Agreement signed by them clearly states that the deposit will be paid to My deposits Scotland. The Respondents have made reference to the condition of the property at the end of the tenancy but these representations are not relevant to this application. The Respondents were until December 2022 directors of a property letting and investment company. It is not clear if this was a company involved with commercial or residential lettings. For that reason, the Tribunal considered that it should not attribute any significant weight to this fact. This is a serious breach the Applicants deposit was unsecured throughout the tenancy. The Respondents ought to have been aware of their obligations as landlords to place the deposit in an approved scheme even if not at the commencement of the tenancy, then certainly when the new tenancy agreement was prepared and the document had the name of an approved scheme inserted. Therefore, in the circumstances the Tribunal considers that an award of two and a quarter times the deposit is an appropriate sanction to impose. The Tribunal shall therefore award the Applicant the sum of £1113.75.

Decision

- 22 The Tribunal finds the Applicant entitled to an order for payment by the Respondent to the Applicant in the sum of £1113.75.

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**