



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

**Chamber Ref: FTS/HPC/PR/24/2047**

**Re: Property at 16 Parkfoot Court, Falkirk, FK1 1YX (“the Property”)**

**Parties:**

**Mrs Omolola Olusegun-Iroko, 5 Loney Crescent, Denny, FK6 5EG (“the Applicant”)**

**Mrs Shehnaz Mohammed, 13 Carrongrove Avenue, Falkirk, FK2 8NG (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be made in favour of the Applicant in the sum of £900.**

**Background**

1. By application received in the period between 3<sup>rd</sup> and 8<sup>th</sup> May 2024 and made under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”), the Applicant applied for an order in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”).
2. The Applicant lodged a copy of the tenancy agreement between the parties that commenced on 13<sup>th</sup> February 2023 and ended on or around 12<sup>th</sup> April 2024, screenshots of communications between the parties, bank statements, title transfer information, notice to leave, landlord registration information, and confirmation from the three approved tenancy deposit schemes that no tenancy deposit was lodged.
3. By emails dated 13<sup>th</sup> and 30<sup>th</sup> September 2024, the Respondent’s representative lodged written representations.

## The Case Management Discussion

4. A Case Management Discussion (“CMD”) took place by telephone conference on 1<sup>st</sup> October 2024. The Applicant was in attendance and supported by her husband. The Respondent was represented by Mr Bonnar, Solicitor.
5. The Applicant explained the background to the application, stating that she was content for the Tribunal to make an order as it saw fit. The Tribunal pointed out to the Applicant that it could only take into account matters in relation to the failure to lodge the tenancy deposit, and would not hear any representations on the condition of the Property at the end of the tenancy.
6. Mr Bonnar referred to his written representations. It was accepted by the Respondent that she had failed to lodge the tenancy deposit, which remained unprotected throughout the duration of the tenancy for a period of one year, six months and twenty-one days. The Respondent was unaware of the requirement for the deposit to be lodged with an approved tenancy deposit scheme, although the requirement was set out in the tenancy agreement. This had escaped her notice. Had she noticed this, she would have investigated matters at the time.
7. The Respondent took legal advice on being served with the application, after which she lodged the tenancy deposit with an approved tenancy deposit scheme on 3<sup>rd</sup> September 2024. Parties can now take advantage of the adjudication procedure provided by the approved tenancy deposit scheme.
8. There has been some discussion between the parties about settlement, as referred to in the email trail lodged on 30<sup>th</sup> September 2024. The Applicant had initially agreed to settle for the sum of £1000, which was comprised of £700 tenancy deposit, notwithstanding that there were concerns over the state of the Property at the end of the tenancy, and £300 compensation. However, the Applicant had rescinded her acceptance, and this appeared to be due to her displeasure at being expected to contact the tenancy deposit scheme to agree to the deposit being returned to her.
9. Mr Bonnar submitted that the Respondent had made reasonable attempts to resolve matters and this should be taken into account by the Tribunal when making a decision. Mr Bonnar referred to the decision in the Tribunal case FTS/HPC/PR/23/2222, where the deposit had remained unprotected throughout the duration of the tenancy. There were aggravating factors in that application that led to the Tribunal awarding the sum of £2400, in that the Respondent had tried to remove the reference to the tenancy deposit scheme from the tenancy agreement by deleting it, and had not returned the tenancy deposit. In this current application, the Respondent took advice when she became aware of the matter and then acted to protect the deposit. The Respondent also tried to resolve matters through negotiation which almost succeeded until the Applicant changed her mind. Mr Bonnar said the application was only being heard because the Applicant wishes to exercise

her right. The Tribunal can take the Applicant's conduct in this regard into account. Mr Bonnar moved the Tribunal to consider a fair and just amount in compensation, taking into account the mitigating circumstances. The Respondent had acted in a transparent, open, and fair manner. Any sum awarded should be between £300 and £500.

10. The Tribunal asked the Applicant whether she wished any further time to take advice on the representations made on behalf of the Respondent. The Applicant said she was content for matters to be decided without any further procedure.
11. The Applicant said she had initially been minded to settle as discussed, however, she had taken advice from Shelter Scotland and she was advised that matters should proceed to the Tribunal. The Applicant considered it was in her interests to have the decision made by the Tribunal. The Applicant said she was not looking for financial gain and would be content with any sum awarded by the Tribunal.
12. The Applicant said that the Respondent had told her to do her worst before the Tribunal application was made. It was only on receiving notification of the CMD that the Respondent contacted the Applicant.

### **Findings in Fact and Law**

13.
  - (i) The Applicant and the Respondent entered into a private residential tenancy agreement in respect of the Property that commenced on 13<sup>th</sup> February 2023 and ended on or around 12<sup>th</sup> April 2024.
  - (ii) The landlord named on the tenancy agreement was the Respondent's mother.
  - (iii) The Property was in the ownership of the Respondent at the time of entering into the tenancy agreement.
  - (iv) A tenancy deposit of £700 was paid to the Respondent by the Applicant at the commencement of the tenancy.
  - (v) The deposit was not lodged with an approved tenancy deposit scheme within 30 days of the commencement of the tenancy.
  - (vi) The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.

### **Reasons for Decision**

14. The Regulations were put in place to ensure compliance with the tenancy deposit scheme, and to provide the benefit of dispute resolution for parties. The Tribunal considers that its discretion in making an award requires to be

exercised in the manner set out in the case *Jenson v Fappiano (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015)* by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case. It is stated in *Jenson v Fappiano* that: ‘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.’

15. The Tribunal considered this to be a serious matter, although not one at the most serious end of the scale. The Applicant’s deposit was not lodged with an approved tenancy deposit scheme as required by Regulation 3, and remained unprotected for the duration of the tenancy, a period of almost seventeen months.
16. The Tribunal took into account the mitigating circumstances put forward by the Respondent, and the fact that there was no attempt by the Respondent to deny responsibility for failing to comply with the Regulations. The Tribunal took into account that the Respondent lodged the tenancy deposit with an approved tenancy deposit scheme, having taken legal advice, and that parties now have the benefit of adjudication in respect of the deposit, should they wish to engage in said adjudication. The Tribunal took into account that the Respondent willingly engaged in settlement discussions in an attempt to resolve matters. The Tribunal took into account the statement in the written representations that the Respondent was a relatively new landlord.
17. The Tribunal noted that the Respondent claimed to have been unaware of her responsibilities as a landlord, however, the tenancy agreement clearly referred to the deposit being registered in a tenancy deposit scheme. This is stated on page one of the tenancy agreement and ought to have been entirely obvious to the Respondent, particularly when the sum of the deposit had to be manually inserted into the relevant clause, which is short and to the point. The Tribunal was not persuaded that the Respondent was not aware of the content of the relevant clause. The Tribunal also noted that the Respondent did not take steps to investigate and rectify her failure when the Applicant pointed it out to her. It would appear that the Respondent did not take matters seriously until an application was made to the Tribunal.
18. The Tribunal considered that the Respondent should have been aware of her responsibilities as a landlord, particularly given the terms of the tenancy agreement. If the Respondent was genuinely unaware of her responsibilities as a landlord, she ought to have attended to them when she first became aware of the matter, rather than wait until an application was made to the Tribunal, and legal advice was taken. The Applicant was entitled to have confidence that the Respondent would comply with her duties as a landlord.

19. The Tribunal makes no criticism of the Applicant for her conduct in this application. She was entitled to make the application and to withdraw from settlement discussions, as she saw fit.
20. The Tribunal took into account the representations made in regard to the decision in FTS/HPC/PR/23/2222, and, particularly, the references within that decision to Ahmed v Russell 2023UT07, and the reasoning that the sanction which is imposed is to mark the gravity of the breach which has occurred. The purpose of the sanction is not to compensate the tenant. The level of sanction should reflect the level of overall culpability in each case measured against the nature and extent of the 2011 Regulations.
21. Taking all the circumstances into account, including the mitigating and aggravating factors in the case, the Tribunal decided it would be fair and just to award a sum of £900 to the Applicant.
22. The Tribunal was uncertain as to why it was said in written representations that the Respondent's mother was the landlord at the time the tenancy agreement was put in place. She was also named as the landlord in the tenancy agreement. However, documentation submitted by the Applicant indicated that the Respondent was the owner of the Property at the time of entering in the tenancy agreement. It was not clear to the Tribunal why the Respondent's mother was named as the landlord if she was not the owner of the Property at the relevant time. In any event, it was clear that the Respondent arranged the tenancy and the tenancy agreement.

### **Decision**

23. The Tribunal grants an order against the Respondent for payment to the Applicant of the sum of £900 in terms of Regulation 10(a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

### **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.**

# H. Forbes

Legal Member/Chair

— 1<sup>st</sup> October 2024  
Date