



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

**Chamber Ref: FTS/HPC/PR/24/2894**

**Re: Property at Flat 0/1, 15 Partickhill Road, Glasgow, G11 5BL ("the Property")**

**Parties:**

**Ms Catherine Hughes and Mr David Hughes, 3 Murchie Drive, Prestwick, KA9 2ND  
("the Applicants")**

**Dr Mark Littlewood, PO Box 785, Wanaka, 9305, New Zealand ("the  
Respondent")**

**Tribunal Members:**

**Gillian Buchanan (Legal Member)**

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

At the Case Management Discussion ("CMD") which took place by telephone conference on 30 October 2024 the Applicants were in attendance. The Respondent was neither present nor represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

The CMD was in respect of this matter and the related case bearing reference FTS/HPC/CV/24/3105.

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:-**

**Background**

The Tribunal noted the following background:-

- The Respondent leased the Property to the Applicants in terms of a Short Assured Tenancy Agreement ("the SAT") that commenced on 28 August 2015 for the period to 27 August 2016. The SAT continued thereafter on a month to month basis.

- The deposit payable in terms of the SAT was agreed to be £750.
- On 24 August 2015 the Applicants paid by bank transfer a sum of £1500, being the deposit together with the first months rent of £750, to the nominated bank account of the Respondent's Letting Agent.
- The Applicants vacated the Property in April 2024.
- The Applicants have been unable to secure the return of the deposit.

This application is made under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations").

### **The Case Management Discussion**

In addition to the application, the Tribunal had regard to the following oral submissions from the Applicants in response to question from the Tribunal:-

- i. At the outset of the SAT the Applicants communicated with a Letting Agent for the Respondent relative to viewings of the Property and the SAT.
- ii. Thereafter the Applicants dealt with Amy Carroll on behalf of the Respondent. She is believed to be his partner.
- iii. Ongoing rent was paid into a different bank account to that which the deposit and first months rent was paid into.
- iv. The Applicants did not receive a written receipt for the deposit paid. However, receipt of the funds is effectively acknowledged in the email of 28 August 2015 from Jacqui Lamb of the Respondent's Letting Agent to the First Applicant and the Respondent.
- v. The Applicants assumed the deposit had been paid into an approved scheme particularly having regard to Clause 6 of the SAT.
- vi. The Applicants have checked with the three approved deposit schemes in Scotland. None of them have any record of the deposit.
- vii. The Applicants contacted the Letting Agent with whom they dealt at the outset, Greg Dykes. He claimed no knowledge of the deposit.
- viii. The Applicants note title to the Property now to be in the name of a Trust with effect from 31 August 2018. They have had no contact from the Trust and were unaware of the title being in the Trust's name until receipt of the paperwork from the Tribunal.
- ix. The Applicants believe the Respondent owned 3 or 4 other properties which he rented out.
- x. The Respondent is a psychiatrist, now in New Zealand.
- xi. Despite their efforts and dialogue with the Respondent subsequent to their removal from the Property, the Applicants have had no meaningful response from the Respondent with regard to the return of the deposit which remains unpaid.

The Applicant seeks a penalty be imposed on the Respondent in terms of the Regulations.

### **Findings in Fact**

- i. The Respondent leased the Property to the Applicants in terms of a Short Assured Tenancy Agreement ("the SAT") that commenced on 28 August 2015 for the period to 27 August 2016. The SAT continued thereafter on a month to month basis.
- ii. The deposit payable in terms of the SAT was agreed to be £750.
- iii. On 24 August 2015 the Applicants paid by bank transfer a sum of £1500, being the deposit together with the first months rent of £750, to the nominated bank account of the Respondent's Letting Agent.

- iv. At the outset of the SAT the Applicants communicated with a Letting Agent for the Respondent relative to viewings of the Property and the SAT.
- v. Thereafter the Applicants dealt with Amy Carroll on behalf of the Respondent.
- vi. Ongoing rent was paid into a different bank account to that which the deposit and first months rent was paid into.
- vii. The Applicants did not receive a written receipt for the deposit paid. Receipt of the funds is acknowledged in the email of 28 August 2015 from Jacqui Lamb of the Respondent's Letting Agent to the First Applicant and the Respondent.
- viii. The Applicants assumed the deposit had been paid into an approved scheme particularly having regard to Clause 6 of the SAT.
- ix. The Applicants have checked with the three approved deposit schemes in Scotland. None of them have any record of the deposit.
- x. The Respondent is a psychiatrist, now in New Zealand.
- xi. Despite their efforts and dialogue with the Respondent subsequent to their removal from the Property, the Applicants have had no meaningful response from the Respondent with regard to the return of the deposit which remains unpaid.
- xii. The Applicants vacated the Property in April 2024.

### **Reasons for Decision**

The Respondent did not submit any representations to the Tribunal and did not attend the CMD. The factual background narrated by the Applicants within the application papers and orally at the CMD was not challenged and was accepted by the Tribunal.

The Tribunal takes a landlord's failure to comply with the Regulations very seriously.

Regulation 3 of the Regulations states:-

*"(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;"*

Regulation 10 of the Regulations states:-

*"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;"*

The Respondent leased the Property to the Applicants.

The SAT is a relevant tenancy under the Regulations.

Notwithstanding the terms of Clause 6 of the SAT the deposit was not timeously lodged with the scheme administrator of an approved scheme in terms of Regulation 3. A sanction is therefore payable by the Respondent to the Applicants in terms of Regulation 10.

In determining the amount payable by the Respondent to the Applicants the Tribunal took into account the following:-

- i. That the deposit was unprotected for the entire duration of the SAT being a period of approximately 8 years and 8 months.
- ii. As a commercial landlord, the Respondent ought to have been aware of the Regulations and the obligations arising in terms of them.
- iii. Even after the SAT had ended the Respondent had the opportunity to lodge the deposit into an approved scheme. He failed or refused to do so.
- iv. The deposit has not been returned to the Applicants and the Respondent's conduct has deprived the Applicants of the opportunity to claim the deposit under the adjudication process operated by such approved schemes.
- v. The Applicants have had to raise separate proceedings before this Tribunal for the return of the deposit.
- vi. The Respondent has not engaged in the Tribunal proceedings.
- vii. The Applicants have been prejudiced by the Respondent's conduct.

The Respondent's conduct is at the most serious end of the scale of penalties available to the Tribunal under the Regulations. The Tribunal therefore determined that, having regard to the foregoing, the Respondent must pay to the Applicants a sum of £2250 by way of a penalty for his failure to comply with the Regulations, being three times the deposit. Such a penalty is proportionate, fair and just in the circumstances.

### **Decision**

The Respondent is ordered to pay to the Applicants a sum of £2250.

### **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.**

# G Buchanan

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**Legal Member/Chair**

**30 October 2024**  
**Date**