



**Decision 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/24/3323**

**Re: Property at 12 Lintwhite Court, Bridge of Weir, Renfrewshire, PA11 3NW (“the Property”)**

**Parties:**

**Mr Muhammad Faiz Syed, 3 Netherton Square, Paisley, PA3 2EF (“the Applicant”)**

**Ms Ashley Martin, whose current whereabouts are unknown (“the Respondent”)**

**Tribunal Members:**

**Fiona Watson (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for payment of the undernoted sum to the Applicant:**

**Sum of THREE THOUSAND, EIGHT HUNDRED AND TWENTY-FIVE POUNDS (£3,825) STERLING**

- Background
- 1. An application was submitted to the Tribunal under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. Said application sought an order be made against the Respondent on the basis that the Respondent had failed to comply with their duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).

- Case Management Discussion
2. A Case Management Discussion (“CMD”) took place on 9 December 2024 by conference call. The Applicant was personally present and represented himself. There was no appearance by or on behalf of the Respondent. The application had been served via website advertisement, following an unsuccessful service attempt by Sheriff Officer. The Tribunal was accordingly satisfied that the CMD could proceed in the Respondent’s absence.
  3. A separate application by the Applicant seeking a payment order against the Respondent under Rule 111 of the Rules for repayment of the deposit paid and under case reference FTS/HPC/CV/24/3519, was heard at the same time.
  4. The Applicant moved for the order for payment to be granted in the sum of £3,825, being three times the sum of the deposit paid. The parties had entered into a Private Residential Tenancy Agreement (“the Agreement”) which commenced 17 June 2023. The Applicant had paid a deposit in the sum of £1,275 at the commencement of the Agreement (“the Deposit”). The Deposit had not been lodged with an approved tenancy deposit scheme nor returned to the Applicant at the end of the Agreement. There were no grounds for retention of the Deposit.
  5. The Applicant submitted that he had paid the first month’s rent and tenancy deposit to the Respondent’s letting agent, Castle Residential, who were instructed only to advertise the Property for lease and arrange the Agreement. They did not carry out any management of the tenancy following the commencement of the Agreement nor hold any funds. The funds were paid by the letting agent to the Respondent, at the commencement of the Agreement. The Agreement ended on 14 July 2024. It was submitted that since the application was raised, the Respondent called the Applicant on 30 October 2024 and indicated that she was angry at him for raising the application, however she has failed to make any payment to him in return of the Deposit held. The three approved tenancy deposit scheme providers in Scotland have confirmed that they do not hold the Deposit.
  6. The Applicant sought an order from the Tribunal on the basis that the Respondent had failed to comply with their duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the 2011 Regulations, in the maximum amount.
  7. The Applicant submitted that the Respondent had previously been found in breach of their duties in terms of Regulation 3 of the Regulations under a previous case concerning the same Property under reference FTS/HPC/PR/22/3833.

- Findings in Fact

8. The Tribunal made the following findings in fact:

- (a) The parties entered into a private residential tenancy agreement which commenced 17 June 2023;
- (b) The Applicant paid a deposit of £1, 275 to the Respondent;
- (c) The Respondent failed to lodge the deposit of £1, 275 into an approved tenancy deposit scheme under Regulation 3 of the 2011 Regulations;
- (d) The Respondent failed to provide the statutory information to the Applicant under Regulation 42 of the Regulations;
- (e) The Tenancy ended on 14 July 2024;
- (f) The Deposit has not been returned to the Applicant.

- Findings in Law

9. The Tribunal made the following findings in law:

9.1 The Respondent was in breach of their duties under Regulation 3 of the 2011 Regulations, which states as follows:

**3 (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; and*
- (b) provide the tenant with the information required under regulation 42.*

**(2)** *The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.*

**(3)** *A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—*

- (a) in respect of which the landlord is a relevant person; and*
- (b) by virtue of which a house is occupied by an unconnected person,*

*unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.*

*(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.*

9.2 The Respondent was in breach of their duties under Regulation 42 of the 2011 Regulations, which states as follows:

*42.—(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).*

*(2) The information is—*

*(a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;*

*(b) the date on which the tenancy deposit was paid to the scheme administrator;*

*(c) the address of the property to which the tenancy deposit relates;*

*(d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;*

*(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and*

*(f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.*

*(3) The information in paragraph (2) must be provided—*

*(a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or*

*(b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.*

9.3 The Tribunal must grant an order in terms of Regulation 10 which states as follows:

*10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—*

*(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and*

*(b) may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to—*

*(i) pay the tenancy deposit to an approved scheme; or*

*(ii) provide the tenant with the information required under regulation 42.*

- Reasons for Decision

10. The Tribunal did not consider that there was any need for a hearing as there had been no representations from the Respondent and therefore the facts of the case are not in dispute.

11. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the information provided by the Applicant at the CMD.

12. The Tribunal was satisfied that the Respondent was in breach of their duties under Regulations 3 and 42 as aforesaid. This was not denied by the Respondent. The 2011 Regulations were introduced to provide security for tenants in paying over deposits to landlords and to address an issue with some landlords taking tenancy deposits and then failing to pay them back where they were lawfully due at the end of the tenancy. The 2011 Regulations also provide that parties have access to an independent and impartial dispute resolution mechanism within a scheme to address any deposit deductions which require to be considered.

13. In terms of Regulation 10, if it is satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal must make a payment order of up to three times the deposit. The maximum amount in this case, with a deposit amount of £1,275, would be £3,825.

14. The Tribunal considers that the discretion of the Tribunal requires to be exercised in the manner as 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. The Tribunal has discretion in the matter and must consider the facts of each case. In that case the Sheriff set out some of the relevant considerations and stated that the case was not one of *"repeated and flagrant non participation in, or non-compliance with the regulations, by a large professional commercial letting undertaking, which would warrant severe sanction at the top end of the scale"*...It was held that *"Judicial discretion is not exercised at random, in an arbitrary, automatic or capricious manner. It is a rational act and the reasons supporting it must be sound and articulated in the particular judgement. The result produced must not be disproportionate in the sense that trivial noncompliance cannot result in maximum sanction. There*

*must be a judicial assay of the nature of the noncompliance in the circumstances..."*

15. By their failure to lodge the deposit into an approved tenancy deposit scheme, the deposit was not protected for a period of thirteen months being the duration of the tenancy. It has since been a further five months between the end of the Agreement and the CMD taking place. The Tribunal considered this to be a significant period of time for the Deposit not to have been held securely.
16. The Tribunal was not satisfied that there was any good reason for the Deposit not having been properly lodged. It noted that there had been no response by the Respondent and no denial of the statutory breach. The Tribunal noted that the Respondent had previously been found in breach of their duties in terms of Regulation 3 of the Regulations under a previous case concerning the same Property and under reference FTS/HPC/PR/22/3833, with an order having been granted against her in this regard. It was noted that in that previous case, the Respondent had also failed to respond to the application raised against her, failed to deny the breaches and failed to provide any explanation as to why the failure to lodge the deposit had occurred. The Tribunal was satisfied that the Respondent was showing persistent disregard for her legal obligations as a landlord, putting her tenants at financial risk.
17. The Tribunal did not consider it reasonable that the deposit had been withheld and not returned to the tenant. By her failure to lodge the deposit with a scheme, she had deprived the tenant of access to a free and impartial scheme arbitration service to determine whether or not the landlord was entitled to withhold said deposit.
18. The Respondent has not engaged in the Tribunal process. There are no mitigating factors to take into account. The Respondent has displayed this behaviour towards previous tenants and has failed to adhere to her legal obligations previously. She has engaged the services of a letting agent to advertise the property for her and arrange the Agreement and therefore has an avenue for obtaining advice and assistance if needed. The Agreement itself sets out that the deposit will be lodged in a tenancy deposit scheme. The Respondent is clearly an experienced landlord and the Tribunal is satisfied that the Respondent is intentionally failing to adhere to her obligations as a landlord.
19. The Tribunal is satisfied on the basis of the reasons set out above that the Respondent's failure to comply with the Regulations warrants a penalty at the highest end of the scale.
  - Decision
20. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant in the undernoted sum:

Sum of THREE THOUSAND, EIGHT HUNDRED AND TWENTY-FIVE POUNDS (£3,825) STERLING

### **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.**

**Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.**

**Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.**

**Legal Member/Chair**

**Date: 9 December 2024**

**Fiona Watson**