



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/CV/24/3238

Re: Property at 3 Bellflower Avenue, Glasgow, G53 7YD (“the Property”)

Parties:

Mr Rashid Butt, 2/2, 55 Barrmill Road, Glasgow, G43 1EQ (“the Applicant”)

Mr Zulfikar Hussain, 62 Hamilton Avenue, Glasgow, G41 4HD (“the Respondent”)

Tribunal Member: Virgil Crawford (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

BACKGROUND

1. By lease dated 21st September 2020 the Respondent let the Property to the Applicant.
2. The start date of the tenancy was 21st September 2020.
3. At the commencement of the tenancy the Applicant paid the sum of £695.00 to the Respondent as a deposit.
4. The deposit was not lodged with an approved tenancy deposit scheme.
5. The tenancy ended on 20 June 2024.
6. The deposit was not repaid to the Applicant following the termination of the tenancy.
7. On 11 July 2024 the Applicant presented two separate Applications to the Tribunal, one seeking a penalty be imposed on the Respondent for a breach of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (the “TDS Regs”) (PR/24/3236) and a separate application seeking an order for repayment of the deposit itself (CV/24/3238).

THE CASE MANAGEMENT DISCUSSION

8. A Case Management Discussion was assigned to be held by teleconference at 10am on 25th November 2024. The Applicant participated personally. His daughter, Armaan Rashid, attended as a supporter. The Respondent did not participate in the Case Management Discussion. The Tribunal, however, was in receipt of a certificate of intimation by Sheriff Officers confirming that the proceedings had been intimated upon the Respondent. In the circumstances, the Tribunal was satisfied in terms of Rule 24 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the FTT Regs”) that the respondent had received intimation of the date and time of the Case Management Discussion and considered that it was appropriate to proceed with the Case Management Discussion in the absence of the Respondent in accordance with Rule 29 of the FTT regs.
9. The Applicant confirmed that the tenancy deposit had been paid by him in cash, at the commencement of the tenancy. It had never been lodged with an approved scheme. It was not returned to him.
10. The Applicant had lodged with the Tribunal an exchange of e-mail messages between him and the Respondent enquiring about the deposit and its return. In separate responses the landlord intimated that it would be repaid. In one email it was stated:

“Hi, thank you for your email. In order to release your deposit we need 1 item, proof of council tax paid. Once we receive that we will release your deposit in your given account. Thank you”.

In a separate e-mail it was stated:

“Hi, thank you for your e mail. I can confirm that you will receive your deposit by Monday. Thank you”.
11. Despite these emails, the deposit was not repaid.

FINDINGS IN FACT

12. The Tribunal found the following facts to be established:-
 - a) By lease dated 21 September 2020 the Respondent let the Property to the Applicant.
 - b) A tenancy deposit of £695.00 was paid by the Applicant to the Respondent.
 - c) The tenancy deposit was not lodged with an approved scheme at any point during the tenancy.
 - d) The tenancy ended on 20 June 2024.
 - e) The tenancy deposit was not repaid to the Applicant.
 - f) No explanation was provided either in advance of the Case Management Discussion nor at the Case Management Discussion as to why the tenancy deposit was not lodged with an approved scheme nor repaid to the Applicant.
 - g) The sum of £695.00 is due, resting and owing to the Applicant.

REASONS FOR DECISION

13. In relation to the breach of the TDS Regs, this appears to be a blatant breach which has been made worse by the failure to repay the deposit at the termination of the tenancy. This is exactly the type of behaviour the TDS Regs were designed to address. The tenancy deposit was never lodged with an approved scheme. It was not protected at any point in time throughout the entire tenancy, that being for a period of almost four years. It has not been repaid. The failure to lodge it with an approved scheme has deprived the Applicant of his right to seek repayment and, if necessary, use the cost free dispute resolution service provided by tenancy deposit schemes.
14. In the absence of any representations having been submitted by the Respondent, the Tribunal could see no reason not to impose the maximum penalty for such a blatant and, indeed, continuing breach of the TDS Regs. Accordingly, a penalty in the sum of £2,085.00, being three times the tenancy deposit, was ordered.
15. In relation to the deposit itself, in the absence of any representations having been made by the Respondent, the Tribunal can see no reason why it would not be due and payable to the Applicant. In the circumstances, a separate order for payment of £695.00, being the amount of the tenancy deposit, is made.

DECISION

The Tribunal granted an order against the Respondent for payment of the sum of SIX HUNDRED AND NINETY FIVE POUNDS (£695.00) STERLING to the Applicant.

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.

Virgil Crawford

Legal Member/Chair

Date 25 November 2024

