



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

**Chamber Ref:** FTS/HPC/PR/24/3237

**Re:** Property at 27 Sanquhar Avenue, Prestwick, KA9 1DQ (“the Property”)

**Parties:**

**Wendy Craig and Alan Craig, residing at 24 Anderson Crescent, Ayr, KA7 3RN (“the Applicants”)**

**And**

**Susan Paterson, residing at 26 Marina Road, Prestwick, KA9 1QZ (“the Respondent”)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has breached her obligations under regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.**

Background

1. On 28 May 2022 the Respondent let the property to the Applicants. A Tenancy agreement was entered into, and the first Applicant paid a tenancy deposit of £500. The tenancy ended on 30 April 2024.

The Case Management Discussion

2. A Case Management Discussion took place before the Tribunal by telephone conference at 2.00pm on 6 December 2024. The first Applicant was present. Both Applicants were represented by Mr D Anderson of Ayr Housing Aid Centre. The Respondent was neither present nor represented. The Respondent has received notice of the hearing. She submitted written representations on 5 & 6 November 2024. I am satisfied that I can justly determine this case in the Respondent’s absence.

3. The Respondent's position is that she rented out the property without taking any advice. Although the Respondent took a deposit from the first applicant, she knew nothing of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("The 2011 Regulations"). She preserved the deposit in an account in her own name. On 02/05/2024 the Respondent repaid the deposit (in full) to the Applicants.

4. Both parties agree that the deposit was not lodged with an approved tenancy deposit scheme within 30 days of commencement of the tenancy. Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 tells me that, because of that agreed fact, I must make a payment order against the Respondent. I can dispose of this case today, without the need for a further hearing.

#### Findings in Fact

5. On 28/05/2022 the Respondent let the property to the Applicants. The tenancy agreement was set out in a letter containing a basic offer to let and an acceptance of that offer. No reference was made to The Private Housing (Tenancies)(Scotland) Act 2016. The statutory terms required by S.8 and schedule 2 of the 2016 Act do not feature in the lease agreement.

6. Before taking entry, the first Applicant paid a deposit payment of £500 to the Respondent. The Respondent placed that money in an account in her name alone. Parties agreed to end the tenancy on 30/04/2024. On 02/05/2024 the Respondent repaid the £500 deposit to the first Applicant.

7. It was only after the tenancy ended that the Respondent applied to the local authority to be registered as a landlord.

8. The Respondent had no intention of depriving the applicants of repayment.

#### Reasons for Decision

9. It is beyond dispute that a deposit of £500 was paid at the commencement of the tenancy. Everyone agrees that the deposit was not paid into an approved scheme but rested in the Respondent's name alone.

10. This may have been the Respondent's first experience as a landlady. The informal nature of the lease discloses a degree of naivety and a lack of knowledge of the law. The Respondent was unaware of the 2011 Regulations until this application was raised.

11. The Respondent acknowledges her error. The Respondent has no history of breaches of the 2011 Regulations. A full accounting for the deposit has been made.

Against those mitigating factors I must balance the undisputed fact that the deposit was unprotected.

12. The Applicants asked me to make a payment order. The purpose of the order is not to enrich the Applicants. The order is a sanction. The purpose of the order is to punish the Respondent, to mark society's displeasure, to protect society, and to ensure the enforcement of the 2011 Regulations in the future.

13. The amount of deposit was £500.00. The deposit was not protected, but the Respondent had no intention of dishonestly misappropriating funds, and repaid the deposit, in full, timeously.

14. A payment order equivalent to 50% of the value of the deposit is sufficient to show the Respondent the consequences which flow from a breach of the 2011 Regulations.

15. The appropriate level of payment order is £250.00

### Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant of Two Hundred and Fifty pounds (£250.00) within 14 days of service of this order.

### **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.**

**Paul Doyle**

**Legal Member**

**6 December 2024**