



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 and under The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“The Regulations”)

Chamber Ref: FTS/HPC/PR/24/0145 and FTS/HPC/CV/24/0222

Re: Property at 19 Strathearn House, Auchterarder, PH3 1JL (“the Property”)

Parties:

Mr Garry Evans, 17 Firehorn, Shinfield, RG2 9GD (“the Applicant”)

Forthmark Limited, 10 Strathearn House, Auchterarder, PH3 1JL (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Tony Cain (Ordinary Member)

Decision (in absence of the Respondent)

[1] In Application with reference FTS/HPC/PR/24/0145, The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) made an award in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 ordering that the Respondent pay the Applicant the sum of £5,850.00 being an amount equal to three times the value of the relevant tenancy deposit. In Application with reference, FTS/HPC/CV/24/0222, the Tribunal makes a Payment Order in favour of the Applicant against the Respondent in the sum of £380.00.

Background

[2] In Application with reference FTS/HPC/CV/24/0222, The Applicant seeks a Payment Order in the sum of £380.00 for the return of a deposit they claim to have paid to the Respondent under a tenancy agreement between the parties. In Application with reference FTS/HPC/PR/24/0145, the Applicant seeks an award under the Regulations for the non-registration of those deposits in an approved scheme.

[3] The Application is accompanied by a copy of the tenancy agreement and evidence of efforts made to secure the return of the deposit at the end of the tenancy. The Applications had called for Case Management Discussions (“CMD”) and a hybrid Hearing had been assigned as the Respondent’s own Mr William Fraser had made reference to suffering a brain injury and had suggested that it would be difficult for him to conduct a Hearing by teleconference. The Tribunal had also directed the Respondent to produce more information about any brain injury as it may bear on both any potential mitigation and also on any impediment on Mr Fraser’s ability to participate in the Hearing process.

Hearing

[4] The Application called for a hybrid Hearing at 10 am on 2 April 2025. The Applicant was personally present by conference call. The Tribunal members were in Inveralmond Business Centre, Perth. There was no appearance by or on behalf of the Respondent who was expected to be present in person at the venue. The details of the Hearing had been competently served on the Respondent and time had been allowed for the Respondent’s Mr Fraser to email in any dates to avoid. The Tribunal therefore decided to proceed in the absence of the Respondent. The Tribunal thereafter heard from the Applicant and asked him questions regarding both Applications and the whole circumstances around the deposit. Having heard from the Applicant and having considered the documentation before the Tribunal, the Tribunal made the following findings in fact.

Findings in fact

1. *The Parties entered into a tenancy agreement in terms of which the Applicant paid a deposit of £1,950.00 to the Respondent ahead of taking occupation of the Property under a Private Residential Tenancy Agreement between the parties. The deposit was paid in two parts with £500.00 paid by bank transfer on 5 July 2023 and a further payment of £1,450.00 paid in advance of the tenancy commencing on 18 September 2023.*
2. *The Respondent failed to register the deposit paid by the Applicant into an approved scheme as required by Regulation 3.*

3. *At the end of the tenancy, the Respondent returned the sum of £1,570.00 to the Applicant and retained the sum of £380.00 supposedly on account of damage alleged to have been carried out to flooring in the Property and for missing hot tub pipes. The Respondent failed to confirm to the Applicant whether the deposit was registered and acted as sole arbiter in respect of whether the deposit was to be returned or retained. The Respondent provided no check in or check out report that might reliably demonstrate the Respondent's position.*
4. *The sum of £380.00 is resting owed by the Respondent to the Applicant.*

Decision

[5] Having made the above findings in fact, the Tribunal had to determine what, if any, award ought to be made under Regulation 10. The Tribunal proceeded on the basis that the determination of the award required the Tribunal to exercise its judicial discretion to consider what would be fair, proportionate and just.

[6] In forming its approach to where this particular breach sat on the scale of sanctions open to the Tribunal, The Tribunal considered that there were certain factors that weighed towards both leniency and severity. The Tribunal considered that the fact that the Respondent had paid the majority of the deposit back promptly at the end of the tenancy weighed in favour of a degree of leniency. However, this had to be balanced with factors which weighed in favour of a more serious sanction. These factors were the casual approach to the deposit shown by the Respondent, the length of time the deposit was left unprotected and also the decision not to be completely transparent and inform the Applicant as soon as the breach was realised or even reasonably soon thereafter.

[7] The Tribunal also took into account the non-engagement by the Respondent to the Tribunal process and the fact that no mitigation had been put forward. The Tribunal also noted that the Respondent's Mr Fraser had failed to submit information about the head injury which had been alluded to and taken seriously by the Tribunal. The Tribunal noted that the Applicant had been put to considerable effort to secure the return of the deposit which ought to have been straightforward. Those factors precluded an award at the lower end of the scale. The Tribunal decided that the breach ought to be treated at highest end of the scale of options open to the Tribunal. The Tribunal therefore made an award under Regulation 10 in the sum of £5,850.00 in addition to a Payment Order in the sum of £380.00 for the return of the sums wrongfully retained by the Respondent.

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.

Andrew McLaughlin

Legal Member/Chair

2 April 2025

Date