

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

Chamber Ref: FTS/HPC/PR/24/2089

Re: Property at Flat 1/1 25 Eriboll Street, Glasgow, G22 6NZ (“the Property”)

Parties:

**Miss Gabriela Farasheva, WSHA Community Hub, 31 Ashley Street, Glasgow,
G3 6DR (“the Applicant”)**

**Mr Piotr Nasciuk, Miss Paulina Nasciuk, 393 Gilmerton Road, Edinburgh, EH17
7PX; 393 Gilmerton Road, Edinburgh, EH17 7PX (“the Respondents”)**

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondents)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to grant an order for payment in the sum of £750.**

Background

1. By application dated 8 May 2024 the applicant sought an order for payment in the sum of £900 as a result of the respondents’ failure to comply with their duties under regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the regulations”) to place the applicant’s deposit in an approved scheme.
2. The following documents were lodged with the application:
 - Copy tenancy agreement.
 - Email correspondence with SafeDeposits Scotland
 - Copy text correspondence between parties
 - Proof of payment of deposit

- Letter from NHS
3. The respondents lodged written representations and documents including:
 - Copy correspondence between parties
 - Screenshot of transaction with SafeDeposits Scotland
 - Copy text correspondence between parties.
 4. A case management discussion took place by teleconference on 19 September 2024. All parties attended.
 5. The respondents confirmed that they are married. They stated that at the commencement of the tenancy agreement they paid £600 to SafeDeposits Scotland in compliance with regulation 3. They stated that they became aware that the payment had been refunded to them only when the applicant requested confirmation that the deposit was protected in September 2020. At that date they checked and realised that the payment had been refunded. However, they were unclear as to the reason why the sum had been refunded.
 6. In relation to the second period during which the applicant states the deposit was unprotected – from October 2022 to January 2024 – the respondents disputed that they were in breach of the regulations during that period. They stated that the deposit had been retained by the tenancy deposit scheme while a dispute with a joint tenant was dealt with. They stated that the deposit had at no time been returned to them during this period.
 7. The Tribunal fixed a hearing by videoconference to determine whether the respondents had breached the regulations and the level of any award under regulation 9.

Hearing – 27 March 2025 - videoconference

8. The first respondent emailed the Tribunal at 06:59 on the morning of the hearing stating:

I am afraid I will not be able to attend today's meeting as I have a scheduled surgery which was moved from yesterday to today. I am afraid I have to be in the St Johns hospital today again. Thank you
9. The email did not request an adjournment or provide any information about whether the first respondent would attend the hearing. The Tribunal emailed the first respondent at 09:54 to enquire whether the second respondent would

be attending the videoconference. The Tribunal had not been provided with an email address for the second respondent. The Tribunal telephoned the mobile number provided for both applicants prior to the hearing commencing. The number was not answered.

10. The applicant opposed any adjournment of the hearing. She stated that there was no reason why the second respondent could not attend the hearing and referred to the length of time that had passed since the application had been submitted.
11. The Tribunal determined to proceed with the hearing in the absence of the respondents in terms of rule 29. The Tribunal was satisfied that the respondents had been properly notified of the CMD. In deciding whether to adjourn the hearing the Tribunal had given weight to the very late notice of the second respondent's surgery and the lack of any evidence to support the submission that surgery was taking place. The Tribunal also took into account of the failure of the second respondent to attend the hearing without any explanation. The Tribunal gave weight to the fact that efforts had been made to contact the respondents on the morning of the Tribunal to request further information which had not been responded to and the impact of a delay on the applicant who had prepared for the hearing and was ready to proceed. The Tribunal considered that had the first respondent submitted a request to adjourn with appropriate evidence that he was undergoing a medical procedure, and if the second respondent had explained why she was unable to participate, this may have been allowed. However, in the absence of any evidence and taking the foregoing factors into account, the Tribunal determined to proceed with the hearing.

Summary of the applicant's evidence

12. The applicant stated that she had moved into the property on 1 July 2019. She referred to the tenancy agreement that had been submitted which specified a deposit of £600. The applicant made payment of her share of the deposit of £300 to the respondents. The joint tenant had moved out in December 2021. After she had moved out a new tenant had moved into the property between January and September 2022. The applicant stated that her deposit was dealt with separately from the joint tenant. The applicant stated that when the joint

tenant moved out in September 2022 there was a dispute between the joint tenant and the respondents regarding the deposit. The applicant stated that her deposit was refunded to the respondents as part of the dispute process however it had not been paid back into the scheme. Accordingly her deposit was unprotected between October 2022 and January 2024. She referred to documents that had been lodged from Safe Deposit Scotland showing that the deposit had not been protected during this period.

13. The applicant stated that she moved out of the property on 20 April 2024. The applicant stated that she had been aware of the tenancy deposit regulations as she had an issue with a deposit in a previous tenancy. She stated that she thought the respondents had intentionally not protected the deposit. She stated that she asked them on a number of occasions to lodge the deposit in a scheme. The applicant stated that she had put a lot of time and energy into dealing with the respondents over the deposit. She stated that the respondents often failed to carry out repairs and they were difficult to communicate with. She stated that the property had been affected by mould and dampness. The applicant stated that she moved out of the property after the respondents submitted an application seeking an eviction order.
14. The applicant stated that she found the process of dealing with the respondents in relation to the deposit and other tenancy issues impacted her mental health. The applicant stated that she was financially impacted by having to move out of the property. She stated that the deposit had been returned to her in full after she moved out of the property.

Findings in fact

15. The applicant entered into a private rented tenancy agreement with the respondents and a joint tenancy with a commencement date of 1 July 2019.
16. A deposit of £600 was paid at the commencement of the tenancy.
17. The joint tenant moved out of the property in December 2021.
18. The joint tenant's share of the joint deposit of £300 was refunded in December 2021.
19. The applicant's deposit of £300 was transferred to the new tenancy which commenced in January 2022.

20. The respondent's tenancy deposit was protected until October 2022 when it was repaid to the landlord as part of a dispute when a second joint tenant moved out of the property.
21. The respondent failed to re-lodge the applicant's deposit in a tenancy deposit scheme from October 2022 until January 2024.
22. The applicant requested that the deposit be placed in a relevant scheme on a number of occasions during the tenancy period.
23. The applicant experienced issues with repairs during the tenancy period.
24. The applicant left the property on 20 April 2024.
25. The deposit was returned to the applicant after she left the property.
26. The tenancy agreement ended on 20 April 2024.
27. The present application was accepted on 8 May 2024.
28. The respondent experienced health issues and stress as a result of having to find alternative accommodation.

Reasons for the decision

29. Regulation 3 of the 2011 Regulations provides inter alia :

(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..

30. Regulation 9 of the 2011 Regulations provides:

(i) A Tenant who has paid a tenancy deposit may apply to the First Tier Tribunal for an order under Regulation 10 where the Landlord did not comply with any duty in Regulation 3 in respect of that tenancy deposit.

(ii) An Application under paragraph 1 must be made no later than three months after the tenancy has ended.

31. Regulation 10 of the 2011 Regulations provides inter alia :

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

32. The Tribunal took into account the written documents lodged by the parties and the oral submissions at the cmd and hearing.
33. The Tribunal found that there had been a breach of the tenancy deposit regulations and that the present application had been made timeously. The respondents had stated at the cmd that they disputed that the deposit had been unprotected. The documents that had been submitted by the applicant included emails from safe deposit Scotland. The emails demonstrated that the applicant's deposit had been unprotected from October 2022 until January 2024. The emails also confirmed that the original deposit had been unprotected from the commencement of the tenancy on 1 July 2019 until September 2020. The Tribunal determined that a second tenancy agreement had been created after the original joint tenant left the property. As the application was submitted within 3 months of the applicant leaving the property and terminating the tenancy the application had been made timeously.
34. The Tribunal required to consider an appropriate level of award in terms of regulation 10 in light of the information provided.
35. The legal test to be applied in determining the level of sanction is set out in *Jenson v Fappiano* 2015 G.W.D. 04-89 and subsequent case law. Those authorities are reviewed by Sheriff Cruickshank in *Ahmed v Russell* 2023 S.L.T. (Tr) 33 and confirm the Tribunal should seek to assess a sanction that is "fair and proportionate" in all the circumstances, taking into account both aggravating and mitigating circumstances.
36. In reaching a determination the Tribunal took into account that there had been a breach of the 2011 regulations which had left the deposit unprotected for 15 months from October 2022. The Tribunal took into account that this breach had followed a breach in relation to the original tenancy agreement. The tenancy had continued on for a period of 3 months after the deposit had been placed in a suitable scheme in January 2024. The Tribunal took into account that the

applicant had been entitled to expect that the deposit would be placed in an appropriate scheme and that she had been disappointed at the breach of the regulations.

37. The Tribunal found the applicant to be truthful and credible and accepted her evidence. The Tribunal accepted the applicant's evidence that the conduct of the tenancy and the respondents' failure to place the deposit in a scheme had caused her stress and inconvenience. The Tribunal also accepted the applicant's evidence that the respondents had been difficult to communicate with regarding repairs issues.
38. The Tribunal noted that the respondents stated at the cmd that they had been unaware that the deposit for the original tenancy had not been placed in a relevant scheme as they had transferred the money in and not noticed that it had been returned. The Tribunal found this not to be credible. The Tribunal gave weight to the fact that the respondents had not lodged any documents to support their position as set out at the cmd that the tenancy had been held by the deposit scheme from October 2022 as part of a dispute process with a previous occupant of the property.
39. Set against the clear breach of the regulations the Tribunal considered the mitigating factors set out by the respondents. The respondents had lodged the deposit in a scheme for part of the tenancy period. The Tribunal also gave weight to the fact that the deposit had been lodged in a scheme from January 2024 until April 2024. The Tribunal also gave weight to the fact that the deposit had been repaid to the applicant in full when she left the property.
40. Taking all of the above factors into account the Tribunal determined the breach was at the higher end of the scale and determined to make an award in the sum of £750 in favour of 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.

Mary-Claire Kelly

Legal Member/Chair

Date 27 March 2025