



**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/24/2113

**Re: Property at 67 Carrick Knowe Gardens, Edinburgh, EH12 7EH (“the
Property”)**

Parties:

**Ms Gabriella Molnar, Dr Istvan Homolya, Flat B, First Floor, 39 Wallace Street,
Stirling, FK8 1NU (“the Applicant”)**

**Mr Ammar Arran, 30 Kingsknowe Road South, Edinburgh, EH14 2JW (“the
Respondent”)**

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to grant an order for payment in the sum of TWO
THOUSAND FOUR HUNDRED POUNDS (£2400)**

Background

1. By application dated 8 May 2024 the applicants seek an award under the Tenancy Deposit Schemes (Scotland) Regulations 2011. The applicants lodged with the application:

- Copy lease with written confirmation of receipt signed by the respondent
- Deposit payment transfer receipt
- Emails from 3 tenancy deposit schemes confirming the deposit had not been lodged

2. A cmd took place via teleconference on 23 August 2024. The respondent was not present or represented. The Tribunal fixed a hearing to determine the application.

Hearing – teleconference -19 March 2024

3. The applicants both attended. The respondent was not present or represented. The Tribunal was satisfied that the respondent had been notified of the hearing in terms of rule 24.1. The Tribunal noted that papers had been sent to the respondent by post and by email to the email address he had used to correspond with the Tribunal. The respondent had also been served with a full set of case papers in advance of the cmd on 23 August 2024 by Sheriff Officers. The Tribunal proceeded with the hearing in the respondent's absence in terms of rule 29.

Summary of the applicants' evidence

4. The applicants sought the maximum award available under the regulations of three times the deposit amounting to £2400. The applicants gave evidence together. They confirmed that they had moved into the property on 23 May 2021. A private residential tenancy agreement had been submitted which showed the applicants as joint tenants. The applicants advised that they were in a relationship and had resided together in the property. They had found the property through an advertisement on gumtree. The applicants stated that they had given written notice to the respondent on 29 February 2024. The tenancy ended on 31 March 2024. The applicants texted the respondent on 31 March 2024 to request the return of the deposit. The applicants also sent an email to the respondent on 15 April 2024 and a further text message on 17 April 2024 requesting the return of the deposit. The respondent replied on 5 May 2024 requesting the applicants' bank details however no payment was made to the applicants. The applicants heard nothing further from the respondent in relation to the deposit. The applicants confirmed that they had submitted an application to the First-tier Tribunal seeking an order for payment in respect of the deposit of £800 reference number FTS/HPC/CV/24/2110. On 23 August 2024 the Tribunal granted an order for payment in respect of the deposit. The respondent sought to recall the order. The Tribunal refused the respondent's application to

recall. The applicants stated that the respondent has not made any payment to them in respect of the order made by the Tribunal.

5. The applicants stated that they had moved out of the tenancy as the option to purchase a property under a shared equity scheme had become available. They also required a larger property. The first respondent is a classical pianist and accompanist. The second respondent is a university tutor and learning support worker. They stated that they had expected to use the deposit to cover the costs associated with moving to their new home. They stated that the loss of £800 had impacted their finances.
6. The applicants stated that in response to the application that had been submitted seeking return of the deposit the respondent had accused them of stealing which was untrue. They stated that as far as they were aware the respondent was a landlord of multiple properties. They stated that for part of the duration of the tenancy he was not on the landlord register.

Findings in fact

7. Parties entered into a private rented tenancy agreement with a commencement date of 23 May 2021.
8. A deposit of £800 was paid at the commencement of the tenancy.
9. The respondent failed to lodge the deposit in a tenancy deposit scheme as required in terms of regulation 3 of the [Tenancy Deposit Schemes \(Scotland\) Regulations 2011/176](#).
10. The tenancy agreement ended on 31 March 2024.
11. The deposit was not returned to the applicants following the termination of the tenancy.
12. The present application was accepted on 10 May 2024.
13. The applicants obtained an order for payment from the First-tier Tribunal dated 23 August 2024 ordering the respondent to repay the deposit of £800 under case reference FTS/HPC/CV/24/2110
14. The respondent failed to obtemper the order for payment.
15. The failure of the respondent to return the deposit had a negative impact on the respondent's financial circumstances
16. The respondent is the landlord of multiple properties.

Reasons for the decision

17. 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..*

18. 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.*

19. 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*

20. The Tribunal took into account the application and accompanying documents, the decision reached by a separately constituted Tribunal under reference number FTS/HPC/CV/24/2110 and the oral evidence provided by the applicants at the hearing. Emails had been submitted from the recognised tenancy deposit schemes confirming that the applicant's deposit had not been protected throughout the duration of the tenancy.

21. The Tribunal determined that there had been a breach of the tenancy deposit regulations and that the present application had been made timeously. The Tribunal required to consider an appropriate level of award in terms of regulation 10 in light of the information provided.

22. 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.
23. 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 the entire duration of the tenancy – 34 months. The Tribunal took into account that the applicant had been entitled to expect that the deposit would be placed in an appropriate scheme.
24. The Tribunal gave significant weight to the respondent’s conduct in relation to the tenancy deposit after the tenancy had ended. The respondent had failed to return the deposit without providing any reason for doing so. The applicants had intended to use the deposit refund to assist with the costs of moving to their new home and were financially impacted as a result of the respondent’s conduct. The respondents required to submit an application to the First-tier Tribunal which took up their time. Even after an order was made against the respondent he failed to return the deposit which remains unpaid.
25. The Tribunal gave weight to the fact that the respondent made no attempt to oppose the present application or to present mitigating factors.
26. The Tribunal took into account that the respondent was a landlord of multiple properties who should have been well aware of his duties as under the regulations.
27. The Tribunal noted that the conduct of the landlord had been unproblematic during the tenancy period.
28. The Tribunal found that the conduct of the landlord after the tenancy ended showed a complete disregard for his duties under the regulations.
29. Taking all of the above factors into account the Tribunal determined the breach was at the higher end of the scale and justified that maximum sanction available under the regulations.

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: 19 March 2025