



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit  
Schemes (Scotland) Regulations 2011 (the 2011 Regulations)**

**Chamber Ref: FTS/HPC/PR/24/0469**

**Re: Property at 22 Foresters Avenue, Stoneywood, Aberdeen, AB21 9JB (“the  
Property”)**

**Parties:**

**Miss Natalie Walker, 6 Fifehill Park, Dyce, Aberdeen, AB21 7NS (“the  
Applicant”)**

**Mr Barry Stewart (SBA), UNKNOWN, UNKNOWN, Canada (“the Respondent”)**

**Tribunal Members:**

**Yvonne McKenna (Legal Member)**

**Decision (in absence of the Respondent)**

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber)  
 (“the Tribunal”) determined that an order for payment is made in favour  
 of the Applicant due by the Respondent in the sum of £2595 (TWO  
 THOUSAND FIVE HUNDRED AND NINETY FIVE POUNDS).**

**Background and Documents Lodged**

- 1. The Applicant made an application in Form G ("Application") dated and  
 lodged on 29 January 2024 under Rule 103 of the First-tier Tribunal for  
 Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the  
 Rules") stating that the Respondent had failed to timeously lodge a tenancy  
 deposit in an appropriate scheme in breach of the Tenancy Deposit Schemes  
 (Scotland) Regulations 2011 ("2011 Regulations").**
- 2. The documents produced to the Tribunal by the Applicant were:**

- The PRT entered into between the parties with a start date of 15 November 2019.
  - Information from the three approved safety deposit scheme administrators
3. The Application was accepted by the Tribunal on 19 February 2024.
  4. Service of the application and relevant paperwork was attempted at the Respondent's address in Canada by international tracked mail. This showed as undelivered, and an application for Service by Advertisement ('SBA') was granted by the Tribunal.
  5. Unfortunately, due to an administrative error, the SBA was not carried out in advance of the initial Case Management Discussion ('CMD').

### **The First Case Management Discussion (14 January 2025)**

6. The Applicant attended the CMD which took place by teleconference on 14 January 2025. The Respondent was not in attendance.
7. The Legal Member explained to the Applicant that some information was lacking in relation to her application. She had been asked by the Tribunal to lodge evidence of the fact she had paid the deposit. In addition she had been asked to provide evidence from the three approved tenancy deposit schemes, to show that the deposit was not lodged with them. This information was still outstanding.
8. The Applicant said that she had attempted to obtain bank statements and these had unfortunately not arrived.
9. The Legal Member explained that the information the Applicant had provided thus far from the three deposit schemes, did not evidence that the deposit for the Property was not lodged with any of them.
10. The case was adjourned and Directions issued to the Applicant in respect of the outstanding information.
11. SBA was carried out by the Tribunal administration, and a further CMD scheduled for 23 April 2025, at 10am, by teleconference.
12. The Applicant complied with the Direction, and lodged proof of payment of the deposit, and confirmation from the three deposit schemes that the deposit was not lodged with any of them.

## **The Second Case Management Discussion (23 April 2025)**

13. The CMD took place on 23 April 2025 by teleconference. The Applicant was present. The Respondent was not present and had not lodged any written representations.
14. The Applicant said that she had no contact with the Respondent since January 2024. Her deposit had still not been returned to her. She said that she had made the application against the Respondent, and not jointly against the Respondent and his wife, as all of her dealings had been with him. (Both the Respondent and his wife are named as landlords on the tenancy agreement).
15. She was aware that there had been a previous tenant living in her accommodation before her tenancy started. Other than that, she was unaware if the landlord rented out any other properties. She had no knowledge of his experience as a landlord.
16. She invited the Tribunal to grant a payment order in her favour and to penalise the Respondent accordingly, with, "whatever powers are available to the Tribunal".

## **Findings in Fact**

17. (i) The parties entered into a private residential tenancy agreement in respect of the Property that commenced on 15 November 2019.
  - (ii) A tenancy deposit of £1038 was paid to the Respondent by the Applicant at the commencement of the tenancy.
  - (iii) The deposit was not lodged with an approved tenancy deposit scheme within 30 days of the commencement of the tenancy.
  - (iv) The tenancy ended on 15 November 2023.
  - (v) The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.

## **Reasons for Decision**

18. Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme administrator of an approved scheme within 30 working days of the beginning of the tenancy, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. The Respondent did not lodge the deposit with an approved scheme and the deposit was unprotected for the four year period of the tenancy.

19. The amount to be awarded is a matter for the discretion of the Tribunal having regard the factual matrix of the case before it. The Tribunal considered the comments of Sheriff Ross in *Rollett v Mackie* UTS/AP/19/0020. At para 13 and 14 he considered the assessment of the level of penalty and said:

*"[13] In assessing the level of a penalty charge, the question is one of culpability, and the level of penalty requires to reflect the level of culpability. Examining the FtT's discussion of the facts, the first two features (purpose of Regulations; deprivation of protection) are present in every such case. The question is one of degree, and these two points cannot help on that question. The admission of failure tends to lessen fault: a denial would increase culpability. The diagnosis of cancer also tends to lessen culpability, as it affects intention. The finding that the breach was not intentional is therefore rational on the facts, and tends to lessen culpability.*

*[14] Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals. None of these aggravating factors is present."*

20. The Tribunal noted that there was no evidence of multiple lettings, and multiple breaches of the 2011 Regulations. In determining the appropriate penalty to impose, the Tribunal considered the following:-

- The tenancy deposit was not lodged with an approved scheme at any point in time.
- The tenancy deposit was unprotected throughout the entirety of the tenancy which was a four year period. This is not an insignificant period of time.
- The tenancy deposit was not returned at the end of the tenancy, and has still not been returned to the Applicant. There was no reason provided by the Respondent as to why he had failed to do so
- Other than the Applicant stating that there had been one previous tenant who lived in the Property before her, the Tribunal had no information before it to suggest that the Respondent is an experienced landlord. The Respondent has not engaged in the Tribunal process, and there has been no acceptance of responsibility on his part. The Applicant was entitled to have confidence that the Respondent would comply with his duties as a landlord.

21. Having regard to the circumstances, the 2011 Regulations had clearly been breached. Furthermore the tenancy deposit was thereafter retained by the landlord.

22. Having regard to all of the circumstances of the case, the Tribunal considered that the breach by the landlord in this case was, in what might be referred to, as the high range of such cases. That being so, the Tribunal imposed a penalty upon the landlord equivalent to two and a half times the tenancy deposit, the total penalty imposed, therefore, being £2595.

### **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.**

**Yvonne McKenna**

**Legal Member/Chair**

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**23 April 2025**

**Date**