

Housing and Property Chamber
First-tier Tribunal for Scotland



**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**

Chamber Ref: FTS/HPC/PR/25/1258

Re: Property at 3 Rigfoot Estate, Strathaven, ML10 6RP (“the Property”)

Parties:

Miss Michelle Gray, 7 Craigmore Place, Coatbridge, ML5 5DZ (“the Applicant”)

**Gordon Bavaird, 1 Rigfoot Estate, Strathaven, ML10 6RP; Carla and Martyn
McGuinness, 22 Redwood Crescent, Hamilton, ML3 8SZ (“the Respondent”)**

Tribunal Members:

John McHugh (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that Carla McGuinness has failed in her obligation under Regulation 3 of the 2011 Regulations and accordingly an Order should be made against her for payment to the Respondent of the sum of £1000.

Background

The Applicant and her partner, Declan Cairney were the tenant and Carla McGuinness was the landlord in terms of a tenancy of the Property which began on 26 June 2023. Mr Cairney paid a deposit of £1550 to Mr and Mrs Bavaird at the outset of the tenancy. The Applicant complains by Application dated 24 March 2025 of the failure to place the deposit into an approved deposit scheme timeously.

The Case Management Discussion

A Case Management Discussion (“CMD”) took place on 20 June 2025. The Applicant was represented by her solicitor, Lisa Agyako.

Mr and Mrs Bavaird appeared for the Respondent.

Mr and Mrs Bavaird explained that their daughter, Carla McGuinness owns the Property and is the registered landlord. They acted as her agent and dealt with all aspects of management in relation to the tenancy under consideration. They were authorised to represent her at the CMD.

Findings in Fact

1. The tenancy began on 26 June 2023.
2. The tenancy ended on 26 December 2024.
3. The tenants were the Applicant and Declan Cairney.
4. The landlord is Carla McGuinness.
5. The landlord's parents, Mr and Mrs Bavaird are her agents.
6. The tenants paid to Mr and Mrs Bavaird a deposit of £1550 which came from Mr Cairney's bank account.
7. The deposit was placed into a tenancy deposit scheme on 30 May 2024.
8. There is no written tenancy agreement.
9. At the end of the tenancy, the Respondent requested return of the full deposit from the deposit scheme and received it.
10. The deposit did not benefit from the protection of an approved scheme between 26 June 2023 and 30 May 2024.

Reasons for Decision

Regulation 10 of the 2011 Regulations specifies that *"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 an amount not exceeding three times the amount of the tenancy deposit."*

Regulation 3 includes a duty upon the landlord to pay any deposit received into an approved deposit scheme within 30 days of receipt.

The Tribunal is satisfied that the landlord in this case failed to do so. There is no dispute that (whatever the reason) the deposit was not placed into an approved scheme until 30 May 2024, meaning that the deposit did not benefit from the security which such a scheme provides. Accordingly, the Tribunal must make an Order.

In considering the terms of the Order, the Tribunal gave consideration to the length of the period of time which the deposit remained unsecured which was reasonably long and to the fact that the failure to place it in a scheme was a deliberate one. The Tribunal also gave consideration to mitigating factors including that the deposit had eventually been paid into a scheme voluntarily and that the Applicant had suffered no loss as the deposit has ultimately been dealt with under the scheme. Mr and Mrs Bavaird explained that for an early part of the lease they had hoped that the tenants might remove voluntarily because the tenancy had gone very badly from the outset because of the tenants' behaviour. They had eventually paid the deposit into a

deposit scheme when they realised that an early departure by the tenants had become unlikely. The amount of the order reflects these factors.

Mr and Mrs Bavaird gave a detailed account of consistent and anti-social behaviour by the tenants involving violence and regular police involvement. They reported significant disturbance to them (they live next door to the Property) and damage to the Property. While these matters may well be true, they are not relevant to the current Application which concerns only the treatment of the deposit payment.

Mr and Mrs Bavaird argued initially that the Applicant had no right to make the application because the deposit had been paid by Mr Cairney. After discussion, it transpired that they had brought proceedings for recovery of rent against both the Applicant and Mr Cairney on the basis that they were joint tenants. That would appear to indicate that both were tenants with joint and several obligations and that the deposit payment should properly be regarded as having been made on behalf of both of them. (Ms Agyako confirmed that that was her understanding and that Mr Cairney supported the Application).

The Respondent in this Application is named as Mr and Mrs Bavaird and Carla and Martyn McGuinness.

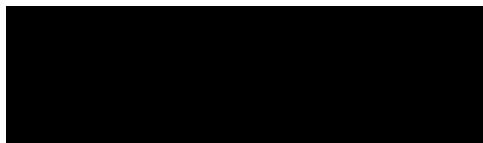
We have established no basis for Martyn McGuinness to have any liability in relation to this matter. Carla McGuinness is the landlord (and Mr and Mrs Bavaird her agent) and so the Order should be made against her alone.

Decision

Carla McGuinness has failed in her obligation under Regulation 3 of the 2011 Regulations and accordingly an Order should be made against her for payment to the Respondent of the sum of £1000.

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.



John McHugh

Legal Member/Chair

20 June 2025

Date