



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) and Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).

Chamber Ref: FTS/HPC/PR/25/0062

Re: Property at 5/13 BEAVERHALL ROAD, EDINBURGH, EH7 4JQ (“the Property”)

Parties:

MRS LIVIA FERREIRA SEYFRIED and MR LUCAS LEMOS BONON FILHO, 2 FYFE LANE, FLAT 172, EDINBURGH, EH6 5GF (“the Applicants”)

MRS LAIS ORRO MARTINS, present address unknown (“the Respondent”)

Tribunal Member:

Karen Moore (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), having found that the Respondents did not comply with Regulation 3 of the Regulations, determined that an Order for Payment in the sum of THREE THOUSAND SIX HUNDRED POUNDS (£3,600.00) Sterling be granted.

Background

1. By application received on 8 January 2025 (“the Application”), the Applicants applied to the Tribunal for an Order in terms of Regulation 10 of Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”).
2. The Application comprised a copy of a private residential tenancy agreement between the Applicants and the Respondent (“the Parties”) with an entry date of 13 November 2019, proof of payment of the tenancy deposit of £1,200.00,

correspondence from SafeDeposit Scotland, My Deposit Scotland and Lettings Protection Scotland confirming that the tenancy deposit had not been lodged in an approved scheme and copy correspondence between the Parties.

3. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 26 June 2025 at 10.00 by telephone conference and intimated to the Parties. The Application was intimated to the Respondent by advertisement.

CMD

4. The CMD took place on 26 June 2025 at 10.00 by telephone conference. The Applicants both took part and were not represented. The Respondent did not take part and was not represented. The Tribunal was satisfied that service by advertisement had been carried out and certified.
5. The Tribunal confirmed the detail of the Application with the Applicants and confirmed that:
the tenancy began on 13 November 2019;
the rent was £600.00
a tenancy deposit of £1,200 was paid at that time;
the tenancy agreement stated that the tenancy deposit would be lodged with an approved scheme and
no information was given in respect of which approved scheme would be used
6. Ms. Seyfreid of the Applicants confirmed that they sought the full award as set out in the Regulations. Ms. Seyfried advised that Tribunal that, since the Application was lodged, the tenancy deposit had been repaid.
7. The Tribunal noted from the correspondence lodged as part of the Application that the Respondent agreed that the tenancy deposit had not been lodged in approved scheme but had been held in their bank account.

Issue for the Tribunal

8. The Respondent having accepted a breach of the Regulations in the correspondence with the Applicants, the Tribunal, was bound to make an Order. Therefore, the only issue for the Tribunal was the amount of the Order.

Findings in Fact

9. From the Application in full and the CMD, the Tribunal made the following findings in fact: -
 - i) There had been a private residential tenancy of the Property between the Parties from 11 November 2019 until 5 December 2024;

- ii) A tenancy deposit of £1,200.00 was paid by the Applicants to the Respondent at the start of that tenancy;
- iii) The private residential tenancy agreement between the Parties provided that the tenancy deposit would be lodged with an approved scheme in terms of the Regulations;
- iv) The tenancy deposit was not lodged with any of the approved schemes at any time during the tenancy;
- v) In particular, the tenancy deposit was not lodged with an approved scheme within the statutory period of 30 working days as required by Regulation 3 of the Regulations;
- vi) No information on the lodging of the tenancy deposit was provided to the Applicants by the Respondent in terms of Regulation 42 of the Regulations;
- vii) The Respondent was in breach of Regulations 3 and 42 of the Regulations throughout the tenancy.

Decision

10. Having made those findings, the Tribunal had regard to Regulation 10(a) of the Regulations which states that, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.
11. The Tribunal considered the breach of Regulation 3 by the Respondent to be extremely serious and so significant that it merited the maximum amount which could be awarded to the Applicants.
12. In reaching that decision, the Tribunal had regard to the Application and accompanying documents.
13. The Tribunal had regard to the fact the Respondent obliged themselves in their own tenancy agreement to lodge the tenancy deposit in an approved scheme and in compliance with the Regulations and simply did not do so. The Tribunal had regard to the Respondent's correspondence which stated that the tenancy deposit was held in their bank account and took the view that this does not absolve the Respondent but compounds the breach as it shows that the Respondent knew full well that the tenancy deposit ought to be held during the tenancy. The Tribunal took the view that the Respondent was fully aware of the Regulations but no regard for them. Further, the Respondent did not advise the Applicants where their funds were held and on what basis the funds were held.
14. It is the Tribunal's view that the legislative purpose and intent of the Regulations is to protect tenants in a situation such as this where a tenancy deposit is treated by landlords as the funds of the landlord and not the funds of the tenant. The Tribunal noted that the tenancy deposit was at risk and unprotected for the duration of a five year tenancy. Further, the Applicants did not have the benefit of knowing where the tenancy deposit was held, on what basis it was held and

did not have the protection of the independent arbitration process in the event of a dispute over the return of the tenancy deposit.

15. In the circumstances, the Tribunal had no hesitation in determining that an award in the full amount of three times the tenancy deposit should be made.
16. The Tribunal then had regard to Rule 17(4) of the Rules which states that the Tribunal “may do anything at a case management discussionincluding making a decision” and so proceeded to make an Order for Payment in the sum of £3,600.00.

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.

Karen Moore

Legal Member/Chair

26 June 2025

Date