

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 Regulations 9 and 10 of the Tenancy
Deposit Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/25/1257

Re: Property at Flat 2/1, 7 Crichton Place, Glasgow, G21 1AY (“the Property”)

Parties:

**Ms Ndidiamaka Juliet Ejimofor, Mr Aiebee-Iberedem Nkereuwem Tim, G/2 440
Townmill Road, Glasgow, G31 3EU; 2/2 777 Westerhouse Road, Glasgow, G34
9RR (“the Applicants”)**

**Prestige Castle Limited, 4 Inverlochy Crescent, Glasgow, G33 5ES (“the
Respondent”)**

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has failed to comply with the duties under Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (‘ the 2011 Regulations’) and ordered the Respondent to pay the sum of £1800.00 (Eighteen Hundred Pounds Only) to the Applicants.

Background

1.This application for sanction on the landlord in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 was first received by the tribunal on 22nd March 2025 and accepted by the Tribunal on 28th March 2025.A case management discussion was fixed for 25th June 2025 at 1130am.

The Case Management Discussion

2.The Applicants attended the case management discussion but there was no appearance by or on behalf of the Respondent. The Tribunal noted that the

application, papers and the date of the case management discussion were served by Sheriff Officers putting these through the letterbox at the Respondent's address on 14th May 2025. The Tribunal was satisfied that the Respondent had been given appropriate notice of the application and case management discussion and that it could proceed in the absence of the Respondent.

3. The Tribunal had sight of the application, a tenancy agreement, e-mails from tenancy deposit scheme providers, proof of payment, and text messages, all lodged by the Applicants.

4. The parties had entered into a tenancy agreement at the property with effect from 16th August 2023. The tenancy ended on 27th January 2025 when the Respondent Ms Ejimofor moved out. The Respondents paid an initial payment of £3600 being 3 months' rent of £900 per month and deposit of £900. They had paid half of the deposit each. The tenancy agreement provided by the Applicants noted in clause 14 that the deposit would be paid into a tenancy deposit scheme in accordance with the 2011 Regulations.

5. Ms Ejimofor advised the Tribunal that she had been referred to the landlord by a friend when she had stayed in a student hostel. She had dealt with a Bernard Odukudu on behalf of the company and paid the rent and deposit to him. When the tenancy started relations were fine between the tenants and the landlord, but Ms Ejimofor advised that she had required to make complaint about the condition of the property, but these were not resolved. She said there were leakages in her room, and she felt ultimately that she had to leave the property as her health was being affected.

6. Ms Ejimofor had advised Mr Odukudu by text message on 27th December 2024 that she would be moving out due to the conditions at the property and asked him at that time where the deposit had been lodged. She received a response by text from Mr Odukudu indicating that he was hopeful that issues of concern could be addressed and advising her that there was an opportunity to move into a new flat. No information was given by him regarding the whereabouts of the deposit at that time. Ms Ejimofor emailed again on 18th January 2025 asking where they could meet for the keys to be dropped off and indicating that she would be contacting the deposit protection services as it was not clear where the deposit was at that stage. She received no reply at that time.

7. Ms Ejimofor contacted the deposit protection service providers and all three advised that they did not hold and had never held the deposit for the property address under her name. Ms Ejimofor believed that the landlord might have other rental properties as she had been offered another property when she advised she was leaving.

8. Both of the Applicants advised the Tribunal that they had never at any time during the tenancy received the required information from the landlord in terms of the other part of the duty in Regulation 3 of the 2011 Regulations. They had asked for their deposit back and had received £750 as a sum had been deducted for cleaning and fixing things, which the Applicants did not accept was required.

9. The Applicants were seeking an order for 3 times the amount of the deposit i.e. £2700.

10.The Tribunal considered that it had sufficient information upon which a decision could be made and that the proceedings had been fair.

Findings in Fact

11.The parties entered into a private residential tenancy at the property with effect from 16th August 2023 and this agreement ended on 27th January 2025.

12.The tenancy was a relevant tenancy in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

13.The tenancy agreement stated at clause 13 that a security deposit of £900 was to be paid by the tenants to the landlord on execution of the tenancy agreement.

14.The tenancy agreement also stated at clause 14 that within 30 days of the start of the term that the landlord would lodge the deposit with a tenancy deposit scheme in accordance with the 2011 Regulations.

15.The Applicants paid a deposit of £900 to Mr Okuduko of Prestige Castle Ltd on 14th August 2023.

16.The Respondent did not pay the Applicants' deposit an approved tenancy deposit scheme at any time during the tenancy.

17.The Respondent did not give to the Applicants at any time the information required in terms of Regulation 42 of the 2011 Regulations.

18.The Respondent returned part of the Applicants' deposit to them after the end of the tenancy in the sum of £750, having deducted £150 for cleaning and repairs, a deduction which the Applicants did not accept was due by them.

19.The Respondent company is understood to own at least one other rental property.

The Relevant Law

20.Rule 3(1) of the 2011 Regulations provides that “ 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

21.A tenancy deposit is defined in the 2011 Regulations as having the meaning conferred by section 120(1) of the Housing (Scotland) Act 2006 (“ the 2006 Act) which states:-

“ A tenancy deposit is a sum of money held as security for –

- (a) The performance of any of the occupant's obligations arising under or in connection with a tenancy or an occupancy arrangement, or
- (b) The discharge of any of the occupant's liabilities which so arise”.

Reasons for Decision

22. The tribunal considered what the appropriate sanction would be in the circumstances based on all of the evidence before it. When considering the appropriate level of sanction to be made in the circumstances, the tribunal considered the need to proceed in a manner which is fair, proportionate and just having regard to the seriousness of the breach (Jensen v Fappiano 2015 GWD 4-89).

23. The tribunal noted the view expressed by sheriff Ross in Rollet v Mackie [2019 UT 45] that the level of penalty should reflect the level of culpability involved. The tribunal considered whether there were aggravating factors which might result in an award at the most serious end of the scale as noted by Sheriff Ross in Fappiano. It was not possible to know if there was malicious or fraudulent intention by the Respondent in failing to protect the deposit or give the Applicants the required information as the Respondent did not engage with the Tribunal proceedings.

24. The Tribunal considered that since the tenancy agreement itself referred to the need to protect the deposit in an approved scheme the Respondent must have been aware of the existence of the schemes. When the Applicant Ms Ejimofor contacted Mr Okuduku indicating she was intending to leave the property she asked where the deposit was protected and received no answer.

25. From enquiries with the tenancy deposit schemes made by Ms Ejimofor it was clear that the deposit had not been protected at all during the entirety of the tenancy, more than 15 months. In addition, some of the deposit paid by the Applicants was retained by the Respondent for reasons which the Applicants did not accept. Had the deposit been protected in one of the approved deposit scheme providers then the Applicants could have availed themselves of the Scheme mediation service regarding the deposit. The failure by the Respondent to protect the deposit denied them this opportunity.

26. Taking all of these considerations into account the tribunal determined although an order at the maximum level was not appropriate, this was a significant breach by a landlord who appeared to know that the Regulations existed but did not abide by them. The Tribunal considered that it was appropriate to make an order for £1800, representing twice the tenancy deposit paid by the Applicants.

Decision

The tribunal determined that the Respondent had failed to comply with the duties in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 to pay a tenancy deposit to the scheme administrator of an approved scheme within the prescribed timescale. The tribunal also determined that the information required to be given to the Applicants in terms of Regulation 3 within the same timescales had not been given to the Applicants in this case. The tribunal made an order requiring the Respondent to pay the Applicants the sum of £1800.00.

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.

V. Bremner

Legal Member/Chair

Date 25.6.25