

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 Section 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/25/0593

Re: Property at 22 March Street, 2/1 Room No.11, Glasgow, G41 2PX (“the Property”)

Parties:

Mr Chanyoung Kim, 3 Blackfriars Road, Glasgow, G1 1QG (“the Applicant”)

City BNB LTD, 55 Glasgow Road, Rutherglen, G73 1BJ (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order for payment against the Respondent in favour of the Applicant in the sum of £1,800.

Background

1. The Applicant submitted an application under Rule 103 for an order for payment on the basis that it was said that the Respondent had failed to comply with the Tenancy Deposit Schemes (Scotland) Regulations 2011.
2. By decision dated 21 March 2025, a Convenor of the Housing and Property Chamber having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).
3. The Tribunal issued letters on 2 June 2025 informing both parties that a case CMD had been assigned for 29 July 2025, which was to take place by conference call. In that letter, the parties were also told that they were required to take part in the discussion and were informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and considers the procedure to have been fair. The Respondent was invited to

make written representations by 23 June 2025. The Tribunal did not receive any representations from the Respondent.

The case management discussion

4. The Applicant joined the conference call and represented himself. The Tribunal arranged for the attendance of a Korean interpreter, Mr Ha Lim Kim, who translated proceedings for the Applicant. The Respondent did not join the conference call and the discussion proceeded in its absence. This case called alongside a related case which proceeds under chamber reference FTS/HPC/CV/25/0588. The Tribunal explained the purpose of the CMD.
5. The Applicant explained that the tenancy started on 10 September 2024. The Applicant paid £5,370 in September 2024 for rent from 10 September 2024 to 9 March 2025. The Property was a studio flat. The Applicant was told on 5 February 2025 that he could not return to the Property, so the tenancy ended without notice. The Applicant had to arrange alternative accommodation immediately. The Applicant stayed for one night in an “Airbnb” property at a cost of £43.30. He had to arrange an uber taxi at a cost of £30.03 to move his belongings from the Property. The Applicant also lost employment income because he was unable to work as a result of moving from the Property at short notice.
6. The Applicant contacted the Respondent following his departure from the Property and requested repayment of the deposit of £895 and reimbursement of one month’s rent of £895. The landlord initially responded but then stopped responding to contact from the Applicant and has not made payment.
7. The Applicant contacted the approved schemes to find out whether his deposit had been secured and was advised that there was no record of his deposit being secured.
8. The Applicant is aware that the Respondent lets out other properties but could not provide information about whether the Respondent has secured other tenants’ deposits.
9. Having considered the papers and heard from the Applicant, the Tribunal decided that the Respondent breached the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicant was advised that the Tribunal would consider what level of payment order was appropriate and thereafter issue a written decision.

Findings in Fact

10. The parties entered into a private residential tenancy which commenced 10 September 2024.
11. The Applicant paid a deposit of £895 to the Respondent.

12. The Applicant's deposit was not secured in an approved scheme.
13. The Respondent failed to comply with his duty in terms of Regulation 3 of the 2011 Regulations in respect that the deposit paid by the Applicant was not paid to an administrator or an approved scheme within 30 working days as required.

Reason for Decision

14. The Tribunal took into account the application and supporting papers and the submissions made at the CMD. The Tribunal was satisfied that it could reach a decision on the application without a hearing under Rule 18 of the Rules and make relevant findings in fact based on the information provided by the Applicant. The Tribunal did not identify any issues to be resolved in this case that would require a hearing to be fixed.
15. The Respondent did not join the CMD and did not lodge any written representations. The tenancy agreement states that the deposit would be secured with Letting Protection Service Scotland. The documentation provided by the Applicant showed that a deposit was paid and had not been secured with Letting Protection Service Scotland. The supporting papers also demonstrate that the Applicant has made requests of the Respondent for payment. Despite those requests, the information before the Tribunal was that payment has still not been made.
16. The Regulations exist to protect a tenant's deposit and to provide the benefit of dispute resolution, if required.
17. The terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 are mandatory and state "*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. The Tribunal was satisfied that the Respondent failed to comply with its duties in terms of that regulation. It was the Respondent's duty to pay the deposit to the scheme administrator within 30 working days. The Tribunal was mindful that the deposit was not protected for the entirety of the tenancy. The Tribunal also took account of the fact that the Applicant asked for return of the deposit and other sums and the Respondent has not repaid the deposit. There appears to be no recognition on the part of the Respondent that it had failed to comply with the Regulations.
19. The Tribunal considered that its discretion in making an award requires to be exercised in a manner consistent with the case *Jenson v Fappiano (Sheriff*

Court) (Lothian & Borders, Edinburgh) 28 January 2015. It must be fair, just and proportionate and informed by taking account of the particular circumstances of the case.

20. The Tribunal considered the decision of the Upper Tribunal (UTS/AP/19/0020) which states: *“Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate of reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals.”*

21. In the present case, the Respondent did not secure the Applicant’s deposit, nor did it repay the deposit. The deposit was paid in September 2024. The Applicant has suffered a loss of £895. The tenancy ended abruptly more than 5 months ago. There is no information about repeated breaches of the Regulations or fraudulent intent, but the Respondent appears to have ignored the Applicant’s requests for payment. The failure by the Respondent to secure the deposit has deprived the Applicant of the adjudication process. An appropriate sanction in these circumstances for failure to comply with the duties was to order the Respondent to pay the Applicant £1800.

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.

Nicola Irvine

Legal Member/Chair

29 July 2025
Date