



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

Chamber Ref: FTS/HPC/PR/24/3705

Re: Property at 2/9 Giles Street, Edinburgh, EH6 6DJ (“the Property”)

Parties:

Mr Mirwais Zamrai, 12 Granville Terrace, Edinburgh, EH10 4PQ (“the Applicant”)

Alice Harrington, 99 Chapel Street, High Valleyfield, Dunfermline, KY12 8TU (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order be made against the respondent in the sum of One Thousand Eight Hundred Pounds (£1,800)

Introduction

This is an application under Rule 103 and Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Service of the application was effected by Sheriff Officers on 11 February 2025. Written representations were required from the respondents by 1 March 2025. None were received. An earlier CMD took place on 25 March 2025. None of the named respondents participated. The application was adjourned and a Direction was issued which required written representations from the respondents within 14 days. This was not complied with.

This CMD took place by teleconference on 22 September 2025 at 10.00 am. The applicant represented his own interests. Mr Neil Harrington represented the interests of the named respondents.

Findings and Reasons

The property is 2/9 Giles Street, Edinburgh EH6 6DJ. The applicant is Mr Mirwais Zamrai who is the former tenant. The applicant had a joint tenant Mrs Farkhunda Zamrai who is his wife. She consents to the application being made.

There were three named respondents. The first respondent is Ms Claire Harrington who is the named former landlord on the written tenancy agreement. The second is Mr Neil Harrington who showed the applicant round the property before the lease commenced and to whom the deposit was paid. He is the husband of Ms Claire Harrington. He is also the son of Ms Alice Harrington who is the registered title holder of the property. Alice, Harrington, is the heritable proprietor and the landlord. She is the registered landlord on the Scottish Landlord Register. The named landlord on the lease, namely Ms Claire Harrington and Mr Neil Harrington who showed the property and received the tenancy deposit are family members who were acting as her agents. These factual arrangements were accepted by Mr Harrington today and it was further accepted that any order requires to be made against Ms Alice Harrington.

A private residential tenancy in respect of the property commenced on 1 July 2021. The rent stipulated was £950 per calendar month. The applicant paid £1,200 by way of deposit. The tenancy ended on 10 July 2024. The applicant has not received return of his deposit.

The applicant has lodged documentary evidence that the deposit is not held by any one of the three Tenancy Deposit Schemes operating in Scotland' which are SafeDeposits Scotland, Mydeposits Scotland or Letting Protection Service Scotland.

Mr Harrington accepted that the deposit was not paid into any of the approved schemes. He accepted the model written tenancy agreement was modified by removing the reference to the deposit being paid into an approved scheme. His explanation that this was due to a request from the applicant for a month-to-month lease is no excuse.

The duties of landlords are contained within Regulation 3. This requires the landlord who has received the tenancy deposit in connection with the relevant tenancy to pay the deposit to a relevant scheme administrator from an approved scheme within 30 working days of the beginning of the tenancy. The respondent, and, or her agents on her behalf, failed to do this. Regulation 10 requires the Tribunal to make an Order against the respondents to pay to the applicant an amount not exceeding three times the amount of the tenancy deposit.

The tribunal considered all relevant circumstances prior to making any Order under Regulation 10. The respondent was operating as a commercial landlord yet neither she nor her agents have demonstrated or evidenced that she is aware of her legal duties and responsibilities. Modification of the written lease agreement sought to contract out of the legal responsibilities which exist to protect the applicant's deposit.

The respondent, and her agents, failed to act diligently and professionally and failed to account to the applicant in a proper manner. The applicant, who challenges the retention of his deposit, has been disadvantaged by the respondent's failure to pay the deposit into a scheme as required. Any dispute regarding the return of the deposit is not an issue for this tribunal. The respondent failed to cooperate with the tribunal including failing to comply with a Direction which has led to a delay in the resolution of the application.

In all the circumstances, the Tribunal ordered that the respondents pay to the applicant the sum of one and a half times the amount of the tenancy deposit ie a total of £1,800. This is fair and proportionate in all of the circumstances. The public require to have confidence that residential landlords are operating fairly and that their deposits are secured in accordance with the law in force in Scotland.

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.

Richard Mill

Legal Member:

Date: 22 September 2025