



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/25/2346

Re: Property at 2/1 3 Dougrie Place, Glasgow, G45 9BA (“the Property”)

Parties:

Mr Vander Da Rosa, 50 Mason Lane, Motherwell, ML1 1YN (“the Applicant”)

Miss Marley Bartolomeu, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Mark Thorley (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Payment by the Respondent to the Applicant in the sum of Two Thousand, One Hundred Pounds (£2,100) be paid.

- **Background**

1. The Applicant applied to the Tribunal for an Order under the Tenancy Deposit Regulations, setting out that the Respondent had failed to put a deposit paid by the Applicant into a registered Tenancy Deposit Scheme.
2. The Applicant had applied to the Tribunal on 2 May 2025, including a variety of documentation, which included proof of deposit, evidence of the end of the tenancy, and proof also that the tenancy deposit was not protected within a scheme.
3. The Applicant had paid a deposit on 22 September 2024 in the sum of Seven Hundred Pounds (£700). There was no tenancy agreement. The tenancy came to an end on 21 March 2025.
4. The tenancy deposit had not been returned to the Applicant.

5. The application was accepted for determination on 19 June 2025.
 6. It was served by way of advertisement, the Respondent's address being unknown.
 7. No written representations had been received from the Respondent.
- **The Case Management Discussion**
 1. At the case management discussion, the Applicant attended. There was no appearance by or for the Respondent.
 2. The Applicant set out that he had rented the Property and had entered into the property on 22 September 2024. It was a studio flat. Rent had been paid in the sum of Seven Hundred Pounds (£700) per month.
 3. A payment of Fourteen Hundred Pounds (£1,400) was paid on 22 September 2025, which amounted to the sum of Seven Hundred Pounds (£700) by way of tenancy deposit and Seven Hundred Pounds (£700) rental in advance.
 4. The tenancy had concluded on 22 March 2025.
 5. The Respondent sent a WhatsApp message to the Applicant on 23 March 2025: "Hello, good morning Vander, I am still in the process of sending you the deposit. I haven't forgotten. Just to clarify. I was there at the apartment yesterday and everything is fine. Thanks"
 6. The tenancy deposit had never been paid into a deposit scheme. The tenancy deposit was never returned.
 - **Findings in Fact**
 1. The Applicant rented from the Respondent the Property, commencing on 22 September 2024.
 2. A sum of Seven Hundred Pounds (£700) was paid by way of tenancy deposit on that date.
 3. The tenancy came to an end on 21 March 2025.
 4. The tenancy deposit had never been placed into a registered scheme.
 5. The tenancy deposit was never returned.
 - **Reasons for Decision**

1. The Tribunal accepted the written evidence provided by the Applicant. There was no appearance by or for the Respondent.
2. It was clear that the tenancy deposit had been paid. Rent was paid up to date for the time of the departure of the Applicant. There was no basis of withholding monies.
3. Having decided that the Respondent had failed to comply with the duty under Regulation 3(1) of the 2011 Regulations to pay the tenancy deposit into an approved scheme within thirty working days of the start of the tenancy, the Tribunal was therefore obliged to make an Order requiring the Respondent to make payment to the Applicant, in terms of Regulation 10 of the 2011 Regulations.
4. The Tribunal is required to consider the sum which the Respondent should be ordered to pay to the Applicant, which could be any amount up to three times the amount of the tenancy deposit. The amount of any award is the subject of judicial discretion after careful consideration of the circumstances of the case, as per the decision of the Inner House of the Court of Session in the case of *Tenzin v Russell* 2015 Hous.LR.11.
5. In considering the appropriate level of Payment Order 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 (*Sheriff Welsh in Jenson v Fappiano* 2015 GWD4-89).
6. The Tribunal noted the view expressed by Sheriff Ross in *Rollet v Mackie* ([2019] UT45) that the level of penalty should reflect the level of culpability involved. As Sheriff Ross noted at paragraph 13 of his decision: "The admission of failure tends to lessen the fault: A denial would increase culpability."
7. The Respondent has failed to admit liability.
8. The Tribunal considered the various factors to be considered as set out in *Rollet v Mackie*. The Respondent had acknowledged that the deposit had been paid. The Respondent acknowledged that the deposit was to be returned. The Respondent acknowledged that the Property seemed to be in good order at the conclusion of the tenancy. The deposit had never been paid into a scheme and had never been repaid.
9. Taking all this into account, this appeared to be at the very upper end of culpability. The requirement to pay a tenancy deposit into an approved scheme is an attempt to protect the deposit and offers protection for both parties in the event of any dispute at the end of the tenancy.
10. Having regard, in particular, to the fact that the deposit had never been paid into a scheme, had not been returned and no reason had been given not to return it, despite the apparent acceptance by the Respondent that it should

be returned, the Tribunal awarded three times the amount of the tenancy deposit, being fair, proportionate and just, having regard to the seriousness of the breach.

- **Decision**

1. The Tribunal determined that the Respondent has failed to comply with the duty 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 therefore makes an Order requiring the Respondent to pay to the Applicant the sum of Two Thousand, One Hundred Pounds (£2,100).

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.

M Thorley

20.11.2025

Legal Member/Chair

Date