



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)  
Act 2014**

**Chamber Ref: FTS/HPC/CV/23/0559**

**Re: Property at 11 Cadboll Road, Invergordon, Ross-Shire, IV18 0HR (“the  
Property”)**

**Parties:**

**Mr Brian Flett, Flat 5 Royal Court, Joss Street, Invergordon, IV18 0AS (“the  
Applicant”)**

**Mr Allan Stone, 11 Cadboll Road, Invergordon, Highlands, IV18 0HR (“the  
Respondent”)**

**Tribunal Members:**

**Gillian Buchanan (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that:-**

At the Case Management Discussion (“CMD”) which took place by telephone conference on 27 March 2023 the Applicant was in attendance. The Respondent was neither present nor represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

Prior to the CMD the Tribunal had received from the Applicant the following additional representations:-

- i. Letter dated 31 January 2023 with attachments; and
- ii. Email and letter 17 March 2023.

The tribunal also received the following written representations from the Respondent:-

- i. Email dated 14 March 2023 with attachments;

- ii. Email dated 21 March 2023;
- iii. Email dated 23 March 2023; and
- iv. Email dated 24 March 2023 with attachments.

The CMD was in respect of this matter and the related case between the parties bearing reference FTS.HPC.PR.23.0274.

### **Background**

The tribunal noted the following background:-

- i. The parties entered into a Short Assured Tenancy Agreement.
- ii. The initial term of the tenancy was 15 June 2017 to 15 December 2017.
- iii. The tenancy continued beyond the initial term on a month to month basis.
- iv. The rent payable in terms of the tenancy was £625 per month.
- v. The deposit payable in terms of the tenancy was £625.

### **The CMD**

At the CMD the Applicant made the following additional oral representations in respect of this matter and the related case between the parties bearing reference FTS.HPC.PR.23.0274:-

- i. The deposit was paid by the Applicant to the Respondent on 1 June 2017.
- ii. During the tenancy the Applicant asked the Respondent numerous times if the deposit had been lodged into an approved scheme. The Respondent simply said everything would be sorted.
- iii. The tenancy ended on 31 October 2022.
- iv. In August 2022 the Applicant asked the Respondent for proof of the deposit having been lodged into an approved scheme. Nothing was supplied.
- v. The Applicant discovered the Respondent was not paying his mortgage by means of a letter sent by recorded delivery to the occupier of the Property which he collected from the Post Office. The Applicant therefor started paying rent weekly rather than monthly due to his concern that the Property might be repossessed at any time. He said to the Respondent he would resume paying monthly if the deposit was paid into an approved scheme.
- vi. The Applicant did not know if the Respondent owns any other properties.
- vii. He did not know if the Respondent was registered as a landlord.
- viii. The Property was rented out briefly by the Respondent prior to the tenancy between the parties.
- ix. The deposit of £625 has never been returned to the Applicant.
- x. The adjudication process operated by approved schemes was not available to the Applicant.
- xi. The Applicant seeks a refund of his deposit and a payment order to that effect.

### **Findings in Fact**

- i. The parties entered into a Short Assured Tenancy Agreement.
- ii. The initial term of the tenancy was 15 June 2017 to 15 December 2017.
- iii. The tenancy continued beyond the initial term on a month to month basis.
- iv. The rent payable in terms of the tenancy was £625 per month.
- v. The deposit payable in terms of the tenancy was £625.
- vi. The deposit was paid by the Applicant to the Respondent on 1 June 2017.
- vii. During the tenancy the Applicant asked the Respondent numerous times if the deposit had been lodged into an approved scheme.

- viii. The deposit was never paid into an approved scheme during the term of the tenancy.
- ix. The tenancy ended on 31 October 2022.
- x. The deposit of £625 has never been returned to the Applicant.
- xi. The adjudication scheme operated by approved schemes was not available to the Applicant.

### **Reasons for Decision**

The Respondent did not attend the CMD. In his written representations to the Tribunal the Respondent did not dispute that the deposit had not been lodged into an approved scheme. He offered no explanation of any sort as to why he did not comply with his obligations under The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”).

The Respondent did not attend the CMD to explain his position or to answer questions on his written representations.

Had the deposit been paid into an approved scheme in terms of the Regulations, as ought to have happened, the Applicant and the Respondent would have had the benefit of the adjudication process operated by the approved scheme to determine the parties’ respective claims thereon. The various claims purported to be made by the Respondent in his written representations to the tribunal should and would have been determined in the adjudication process.

The factual background therefore narrated by the Applicant within the application papers and on his behalf orally at the CMD was accepted by the Tribunal.

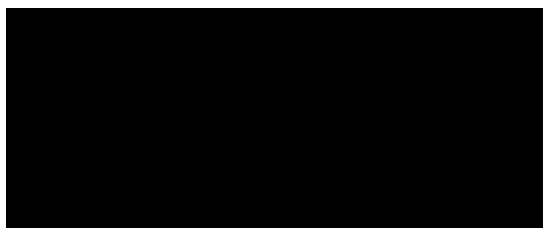
If the Respondent considers he has financial claims against the Respondent arising out of the tenancy he can pursue these in a separate application to the tribunal.

### **Decision**

The Respondent is ordered to pay to the Applicant a sum of £625.

### **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.**



**Legal Member/Chair**

**27 March 2023**  
**Date**