



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

**Chamber Ref:** FTS/HPC/PR/19/2010

**Re: Property at 1/2 19 Vine Street, Glasgow, G11 6BB (“the Property”)**

**Parties:**

Mr Tekena Erekosima, residing at 1/2 29 Gibson Street, Glasgow, G12 8NU (“The Applicant”)

Mr Shahzad Ahmed, residing at flat 1/2 19 Vine Street, Glasgow G11 6BB (“the Respondent”)

**Tribunal Members:**

**Paul Doyle (Legal Member)**  
**Gordon Laurie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has breached his obligations under regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.**

Background

1. On 1 July 2019 the applicant applied to the First-tier Tribunal for Scotland for an order for payment against the respondent in terms of regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 saying that he had paid the respondent a tenancy deposit which had not been lodged with an approved tenancy deposit scheme.

2. This case calls before us for an evidential hearing. The applicant was present and was unrepresented. He was accompanied by his witness, Loa Pour Mirza. The respondent was neither present nor represented. Sheriff Officers served notification of today’s hearing on the respondent on 24 October 2019. We are satisfied that

timeous intimation of the date, time and place of this hearing has been given to the respondent but he has chosen not to participate.

3. At a case management hearing on 30 August 2019 the respondent would not concede that a deposit was paid, but freely admitted that if a deposit was paid it was not paid into a deposit scheme, however he said he is not the landlord; he does not own the property so that the responsibility for the deposit lies with another.

4. The applicant produces a series of screenshots of Facebook correspondence with the respondent together with evidence of bank transactions which adequately tell us that the deposit was paid into the respondent's account on 8 November 2018 and that rental payments were made directly to the respondent. We have clear and unchallenged evidence from the applicant and his witness that the deposit has not been repaid to the applicant.

#### Findings in Fact

5. On 11 November 2018 the respondent let to the applicant the dwellinghouse at flat 1/2 19 Vine Street, Glasgow G11 6BB. A Tenancy agreement was entered into on 11 November 2018. Although the tenancy agreement is silent on the requirement for a deposit, the landlord demand payment of a deposit of £400 on 8 November 2018, which the applicant promptly paid.

6. On 11 November 2018 the parties entered into a written lease for the property. That lease designates the respondent as "The Landlord". Throughout the currency of the lease the respondent received monthly payments of rent from the applicant in accordance with the terms of the written lease entered into between them on 11 November 2018. The applicant gave notice of termination of the tenancy and brought the tenancy to an end on 8 April 2019.

7. After the lease was terminated the applicant asked for return of the deposit. The deposit has not been returned to the applicant. Despite the respondent's protestations, he was the applicant's landlord. He received the rent from the applicant. He received the deposit from the applicant. It is the respondent who retained the deposit. It is the respondent who failed to pay that deposit into an approved deposit scheme.

8. The applicant has asked each of the three approved tenancy deposit schemes if they hold the deposit. None of the schemes has received the tenants deposit from the respondent.

9. The applicant has suffered loss as a result of the respondent's failure to pay the deposit into an approved deposit scheme. The Applicant has been out of pocket since the tenancy ended.

#### Reasons for Decision

10. The respondent accepts that the deposit was not paid into an approved scheme. The weight of reliable evidence tells us that the applicant paid a deposit of £400 to

the respondent. No challenge is taken to the lease placed before us. That lease designs the respondent as "The Landlord". The unchallenged documentary and oral evidence tell us that the respondent accepted payments of rental from the applicant each month throughout the duration of the tenancy agreement.

11. Even though the respondent says he is not the owner of the property and not the landlord, the consistent evidence before us is that the respondent has (at the very least) called himself the landlord. The respondent has told the applicant that he is the landlord. The respondent took the deposit from the applicant, and there has been no trace of the deposit since the respondent received it on 8 November 2018. It is the respondent who retained the deposit. It is the respondent who accepted payments of rental. It is the respondent who has neither paid the deposit into an approved scheme nor accounted for the deposit when asked to do so by the applicant.

12. The respondent has refused to account for the deposit. The respondent has ignored the terms of the 2011 regulations. The respondent, as recently as the Case Management Discussion on 30 August 2019, refused to accept responsibility for failing to place the deposit with an approved scheme designed to protect the interests of both parties. Instead, he has retained the deposit and refuses to either account for the deposit or accept responsibility for his actions.

13. We make an order for twice the value of the deposit to ensure the applicant recovers his loss and to mark society's displeasure; to protect society and to ensure the enforcement of the 2011 regulations in the future.

14. The appropriate level of payment order is £800.

#### Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the applicant of Eight Hundred pounds (£800.00) within 14 days of service of this order.

#### **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

19 November 2019