

**Housing and Property Chamber**  
**First-tier Tribunal for Scotland**

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**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/19/2177**

**Re: Property at Teanalonaig Cottage, Wester Balblair, Beauly, IV4 7BG ("the  
Property")**

**Parties:**

**Ms Rachel Wild, 8 Chattan Gardens, Nairn, IV12 4QP ("the Applicant")**

**Mr Euan Fraser, 12 Torgormack, Kilmorack, Beauly, IV4 7BG ("the  
Respondent")**

**Tribunal Members:**

**Graham Harding (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined that the Applicant was entitled to an order for payment  
by the Respondent in the sum of £720.00**

**Background**

1. By application dated 4 July 2019 the Applicant complained to the Tribunal that the Respondent had failed to lodge her tenancy deposit paid at the commencement of her tenancy of the property into an approved tenancy deposit scheme in accordance with the Tenancy Deposit Schemes (Scotland) Regulations 2011. The Applicant provided the Tribunal with a copy of the tenancy agreement and copies of text messages between the Applicant and the Respondent's wife.
2. By Notice of Acceptance dated 26 July 2019 a legal member of the Tribunal with delegated powers accepted the application and a case management discussion was assigned.

3. Intimation of the case management discussion was given to both parties. The respondent by correspondence received by the Tribunal on 5 September 2019 submitted written representations and advised that he was unable to attend the case management discussion on 10 April but was happy for a decision to be made in his absence.

#### The Case Management Discussion

4. The case management discussion was held at Inverness on 10 September 2019. The applicant attended personally supported by her mother. The respondent did not attend and was not represented. As the Tribunal was aware that the Respondent had been given proper intimation of the case management discussion by Sheriff Officers on 5 August 2019 and that the Respondent had been in communication with the Tribunal it determined to proceed in his absence in accordance with Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
5. The Applicant confirmed that she had entered into what had purported to be a short assured tenancy agreement for a period of three months on 1 June 2017 at a monthly rent of £350.00. She said she had been supposed to have been given a new agreement after three months but never received it and eventually gave up asking for it. The Applicant said that at the commencement of the lease she had asked how much the deposit was and had been told that the previous tenant had paid £240.00 and that she could pay that also. She said she paid a deposit of £240.00.
6. The Applicant went on to say she never received confirmation that the deposit had been paid into an approved scheme. Towards the end of the tenancy there had been an exchange of text messages with the Respondent's wife regarding repayment of the deposit. The Applicant had in the last month of the tenancy initially paid a reduced amount of £110.00 of rent on the basis that the Respondent could then retain the deposit for the balance of the rent. This had not been acceptable to the Respondent and she had then paid a further £240.00. Following the end of the tenancy the Applicant said she had requested her deposit back but had never received it. She had been told a month after she had vacated the property that the Respondent had complained about a smell in the property and had blamed her cat for soiling a carpet. The Applicant disputed this.
7. The Applicant advised the Tribunal that the Respondent had sold the property. She said that she had checked the Landlord's register and he did not appear to be a registered landlord. She said that the Landlord's wife had referred to the Respondent having another rented property but could not say if that was definitely the case. The Applicant said that in addition to the Tribunal sanctioning the Respondent for not putting her deposit in an approved scheme she was looking for her deposit to be returned to her. The Tribunal explained that the Application before it was only in respect of Regulation 9 of the 2011 Regulations and the return of the Applicant's deposit was not a remedy available under that application.

8. The Tribunal considered the written representations received from the Respondent.

#### Findings in Fact

9. The parties entered into an assured tenancy that commenced on 1 June 2017 at a rent of £350.00 per month.
10. The Applicant paid a deposit at the commencement of the tenancy in the sum of £240.00.
11. The Respondent did not lodge the deposit in an approved tenancy deposit scheme.
12. The Respondent was in breach of Regulation 3 of the 2011 Regulations.

#### Reasons for Decision

13. The Tribunal was satisfied from the written submissions, productions and verbal submissions at the case management discussion that the Applicant paid a deposit of £240.00 to the Respondent at the commencement of the lease.
14. The Respondent confirmed in his written submissions that he had retained the deposit and did not deny that he had not lodged the deposit in an approved tenancy deposit scheme. The Tribunal was therefore satisfied that the Respondent was in breach of Regulation 3 of the 2011 Regulations.
15. The Tenancy ended on 26 April 2019 and the application to the Tribunal was made on 4 July 2019 and was therefore timeous.
16. The Respondent submitted representations to the Tribunal as to reasons why he considered he was entitled to retain the Applicant's deposit but did not address the issues that were relevant namely his failure to lodge the deposit in an approved tenancy deposit scheme.
17. As the Tribunal was satisfied that the Respondent was in breach of Regulation 3 of the 2011 Regulations it is in terms of Regulation 10 obliged to make an order awarding a payment of up to three times the deposit by the Respondent to the Applicant. In considering the level of sanction the Tribunal has to consider the severity of the breach and any mitigating factors. In this case the Respondent has not addressed any of the relevant issues at all. The Tribunal has had no indication from him as to why he did not lodge the deposit in an approved scheme. The Applicant's deposit was unsecured throughout the whole period of her tenancy a period of almost two years. It does therefore represent a very serious breach of the Regulations and in the circumstances the Tribunal is of the view that it merits a sanction at the very upper end of the scale. The Tribunal therefore finds the Applicant entitled to an award of three times the deposit namely £720.00.

## **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.**

**Graham Harding**

**Legal Member/Chair**

10 September 2019  
**Date**