



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/18/2576**

**Re: Balegra Farmhouse, Shannochie, Isle of Arran KA27 8SH (“the Property”)**

**Parties:**

**Rebeca Lacey, Glaister Farmhouse, String Road, Isel of Arran KA27 8DR (“the Applicant”)**

**Alan McGrath, Thorncliffe, Springbank, Brodick, Isel of Arran KA27 8BE (“the Respondent”)**

**Tribunal Members:**

**Joan Devine (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay to the Applicant the sum of £3,000.**

**Background**

The Applicant made an application in Form G (“Application”) under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“Rules”) claiming that the Respondent had failed to lodge a tenancy deposit in an appropriate scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“2011 Regulations”). The Application was received on 29 September 2018.

The Applicant provided a copy of the tenancy agreement which consisted of an offer to let dated 3 February 2016 and an acceptance of that offer dated 9 June 2016. The period of the tenancy was from 22 February 2016 to 23 August 2016. The tenancy agreement provided that after the initial period it could be renewed monthly for a further period not exceeding one year.

A copy of the Application and notification of the Case Management Discussion ("CMD") fixed for 19 December 2018 at 10 am was given to the Respondent by Sheriff Officer on 27 November 2018.

### **Case Management Discussion ("CMD")**

A CMD took place on 19 December 2018 at 10 am by conference call. The Applicant was present. There was no appearance on behalf of the Respondent. No written representations were received from the Respondent.

At the CMD the Applicant told the Tribunal that the tenancy had been continued from 23 August 2016 to 30 June 2017 and then from 30 June 2017 to 30 June 2018. The tenancy came to an end on 30 June 2018. The Applicant told the Tribunal that she had made enquiries with Letting Protection Scotland, Safe Deposits Scotland and My Deposits Scotland. All provided emails stating that they had no record of holding a deposit from the Applicant in respect of the Property. A copy of the emails were provided to the Tribunal.

The Applicant told the Tribunal that she took entry to the Property on 22 February 2016. The tenancy agreement provided for a deposit of £1000 to be paid. The Applicant told the Tribunal that she paid the deposit on Thursday 18 February 2016. She paid the deposit in cash to the Respondent's mother. She told the Tribunal that she did not receive any paperwork at that time to show that the deposit had been paid into an approved scheme. She also told the Tribunal that the deposit had not been returned following termination of the tenancy.

### **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement constituted by offer dated 3 February 2016 and acceptance dated 9 June 2016.
2. The Applicant paid to the Respondent a deposit of £1000 on 18 February 2016.
3. The deposit was not paid to the administrator of an approved scheme in compliance with Regulation 3 of the 2011 Regulations.
4. The tenancy ended on 30 June 2018.
5. The application was timeous in terms of Regulation 9 of the 2011 Regulations.

### **Reasons for the Decision**

Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme administrator of an approved scheme within 30 working days of the beginning of the tenancy, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.

The Respondent did not make any written representations or appear at the CMD in order to dispute that the deposit had not been placed in an approved scheme or to provide any explanation for the failure to comply with the 2011 Regulations.

The Tribunal decided to award an amount equivalent to three times the deposit. In so doing the Tribunal sought to ensure that the sanction was fair, proportionate and just. The Tribunal considered that the penalty should act as a deterrent to the Respondent, and to other landlords, against not placing deposits into an approved scheme.

### **Decision**

The Tribunal granted an Order for payment of £3,000 in terms of Regulation 10(a) of the 2011 Regulations.

### **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.**

J Devine

  
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Legal Member/Chair

19 December 2018  
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Date