

**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 (Regulations)**

**Chamber Ref: FTS/HPC/PR/19/2631**

**Re: Property at Flat 3, 7 Botanic Crescent, Glasgow, G20 8QQ ("the Property")**

**Parties:**

**Mr Alexander Kerkham, 89b Walton Road, Warrington, WA4 6NR ("the Applicant")**

**Mr Koen Biesbrouck, Puydt 24, B-1547 Bever, Belgium, Belgium ("the Respondent")**

**Tribunal Members:**

**Alan Strain (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent pay the sum of £380 to the Applicant.**

**Background**

This is an application under Regulation 9 of the Regulations and Rule 103 of the Tribunal Procedure Rules in respect of an alleged failure to protect a tenancy deposit.

The Tribunal had regard to the following documents:

1. Application received 22 August 2019;
2. Tenancy Agreement between the Parties commencing 15 July 2017;
3. Email correspondence between the Parties dated 1,2 and 4 August 2019;
4. Confirmation from Deposit Protection Schemes that no deposit held;
5. Written Representations from Respondent dated 5 November 2019.

**Case Management Discussion (CMD)**

Alan Strain

The case called for a CMD by conference call on 18 November 2019. Both Parties participated and were unrepresented.

The Respondent accepted that he had not protected the deposit under explanation that he was unaware of the requirement to do so and had handled the deposit in good faith. He contended that the Applicant had suffered no financial damage and should not have the right to claim compensation.

He further submitted that the Applicant had left the Property in an unclean state and had only part of his deposit returned. His submissions included photographs in support of this. He deducted £180 from the deposit.

He referred to his experience of having let his property since 2003 and never having any previous tenant question the need to protect the deposit. He is now aware of this requirement and has protected the deposit of new tenants.

The Applicant's position was that the deposit had not been protected and the Respondent had unlawfully deducted the sum of £180 from his deposit. He wished compensation in respect of the Respondent's failure to protect his deposit. He disputed the amount of the deduction in that there was no vouching for the costs.

The Tribunal considered the evidence and submissions and made the following findings in fact:

1. The Parties entered in to a tenancy agreement in respect of the Property commencing 15 July 2017;
2. The Applicant paid one half share of the deposit of £760;
3. The tenancy ended on 15 July 2019;
4. The Respondent returned the sum of £209.46 in respect of the deposit to the Applicant;
5. The Respondent did not protect the deposit in a registered scheme for the duration of the tenancy;
6. The Respondent was unaware of the legal requirement to protect tenancy deposits;
7. The Respondent is an inexperienced landlord with only one Property;
8. The deduction of £180 from the deposit was disputed in so far as there was a lack of vouching.

In light of the fact the failure to protect the deposit was agreed the Tribunal considered that it had sufficient information to determine the matter and the procedure was fair.

The Tribunal considered and adopted the approach set out in ***Russell-Smith and Others v Uchegbu [2016] SC EDIN 64***. In particular the Tribunal considered what was a fair, proportionate and just sanction in the circumstances of the case, always having regard to the purposes of the Regulations and the gravity of the breach. Each case will depend on its own facts and in the end of the day the exercise by the Tribunal of its judicial discretion is a balancing exercise.

The Tribunal weighed all the factors and found it to be of significance that the deposit had been unprotected for the duration of the tenancy and that the Respondent had deducted the sum of £180 from the deposit. It was also significant that the Respondent was unaware of the requirement to protect the deposit and was a relatively inexperienced landlord. He had now taken steps to ensure that any future deposits were protected.

The Tribunal found the breach to be at the lower end of the scale and awarded the sum of £380 as a sanction to be paid by the Respondent to the Applicant.

### **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.**

Alan Strain

**18 November 2019**

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**Legal Member/Chair**

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**Date**