

**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 Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”)**

**Chamber Ref: FTS/HPC/PR/18/2734**

**Re: Property at 45A Kirk Street, Strathaven, ML10 6LB (“the Property”)**

**Parties:**

**Mr Matthew Irvine, Ms Lydia Kennett, 3 Reed Street, Strathaven, ML10 6NE; 3 Reed Street, Strathaven, ML10 6NE (“the Applicant”)**

**Mr James Muir, Current Whereabouts Unknown (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for payment be made against the Respondent in the sum of ONE THOUSAND SIX HUNDRED AND FIFTY POUNDS STERLING (£1650.00).**

**Background Facts**

**The parties entered into a private residential tenancy agreement commencing on 19 January 2018 in respect of the property at 45A Kirk Street Strathaven. The rent was £400 per calendar month. An initial deposit of £550 was paid.**

**The lease stipulated the Respondent would pay the deposit into the approved scheme operated by SafeDeposits Scotland.**

**The Applicants vacated the property on 20 July 2018.**

**The Respondent has refused to repay the deposit paid.**

Enquiries with SafeDeposits Scotland evidences that the Respondent did not pay the deposit into the scheme as he contractually provided for. Enquiries with LPS Scotland and mydeposit Scotland are also evidenced and confirm that the deposit was not paid into their schemes.

The Respondent no longer appears as registered as a landlord in Scotland.

The Tribunal e mailed the Respondent and received no response.

Attempts to serve the necessary papers upon the Respondent at the address held for him on the lease by Sheriff Officers failed. Enquiries revealed he may have moved abroad.

An application was made for service by advertisement. This was granted. Service on the Tribunal's website was effective between 15 and 30 March 2019.

### Findings

The Respondent has failed to pay the relevant deposit paid by the Applicants into an approved scheme as required in terms of Regulation 3. He has failed to return the original deposit of £550 to the Applicants without explanation.

### Reasons for Order Made

Regulation 10 is mandatory in directing a landlord to pay a sum not exceeding 3 times the amount of the tenancy deposit as a penalty for failing in their duties arising from Regulation 3.

There are no mitigating factors which justify anything less than the maximum penalty being imposed under the Regulation 10.

### 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.

Richard Mill

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Legal Member/Chair

18 April 2019  
\_\_\_\_\_  
Date

\*Insert or Delete as required