



**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/19/2753**

**Re: Property at Flat 8/2, 179 Finnieston Street, Glasgow, G3 8HE (“the  
Property”)**

**Parties:**

**Miss Dimitra Miliara, Mr Ioannis Valatsos, 69 Novar Gardens, Bishopbriggs,  
Glasgow, G64 2EJ (“the Applicants”)**

**Burgh Properties Limited, 244 Gallowgate, Glasgow, G4 0TT (“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 Applicants were entitled to an order for  
payment by the Respondent in the sum of £3150.00.**

**Background**

1. By application dated 4 September 2019 the applicants applied to the Tribunal for an order under Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicants submitted a copy of the tenancy agreement, and confirmation of the date the tenancy ended with their application. The Applicants subsequently submitted further written representations including email correspondence between the parties confirming payment of a deposit.
2. By Notice of Acceptance dated 4 October 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 sent to the Applicants by recorded delivery post on 10 October 2019 and was given to the Respondent by Sheriff Officers on 11 October 2019.
4. The Applicants provided the Tribunal with further written representations on 28 October 2019. The Respondent did not submit any written representations.

### **The Case Management Discussion**

5. A Case Management discussion was held at Glasgow Tribunals Centre, 20 York Street, Glasgow on 14 October 2019. The Applicants attended personally. The Respondent did not attend and was not represented. In accordance with Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Rules") the Tribunal, on being satisfied that the Respondent had been given proper notice of the Case Management Discussion determined to proceed in its absence.
6. The applicants confirmed they had paid a deposit of £1050.00 along with the first month's rent of £950.00 on 28 February 2016. They referred the Tribunal to the email exchange between the parties dated 28 February and 1 March 2016 as confirmation that the deposit was paid.
7. The Applicants explained that shortly before the tenancy ended in August 2015 they were made aware from work colleagues that their deposit ought to have been lodged at the commencement of the tenancy in an approved tenancy deposit scheme. They confirmed they had never received intimation from any scheme that their deposit had been lodged.
8. Miss Miliara said she contacted all three of the approved schemes by telephone and they confirmed they had no record of the deposit being lodged.
9. Miss Miliara went on to say she contacted Mr Cucchi of the Respondent company and he confirmed that what he called the advance payment had never been lodged in a deposit scheme.
10. Miss Miliara said that when the Applicants asked for the return of their deposit Mr Cucchi said it would be returned but that there were £1975.00 of factoring fees to be deducted. He then offered to accept half of this amount. The Applicants said they disputed having to pay this as it had never been made clear to them that they were supposed to pay factors fees and the rent had been increased to cover an increase in factors charges.
11. Miss Miliara went on to say that after the Respondent had been given intimation of the Application the Applicants had received repayment of their deposit on 16 October 2019.

12. The Applicants in response to a query from the Tribunal confirmed that it was their understanding that the Respondent operated a letting business and owned other properties.
13. The Applicants confirmed they wished the Tribunal to make a monetary award in their favour against the Respondent as a sanction for breaching the Tenancy Deposit Scheme Regulations.

### **Findings in Fact**

14. The parties entered into a Short Assured Tenancy Agreement that commenced on 1 March 2016.
15. The Applicants paid the Respondent a deposit of £1050.00.
16. The Respondent did not lodge the deposit in an approved Tenancy deposit scheme throughout the entire period of the tenancy.
17. The tenancy ended on 15 August 2019.
18. The Respondent was in breach of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

### **Reasons for Decision**

19. The Tribunal was satisfied that the “advance payment” made by the Applicants at the commencement of the tenancy on 1 March 2019 was a deposit and the Respondent ought to have lodged the funds in an approved Tenancy Deposit Scheme within 30 working days of the commencement of the tenancy in order to comply with Regulation 3 of the 2011 Regulations.
20. The Tribunal was satisfied from the submissions of the Applicants that the Respondent failed to lodge the deposit throughout the whole of the tenancy period and retained the Applicants funds unprotected for some 3 years and 7 months.
21. In terms of the 2011 Regulations if the Tribunal is satisfied that the Respondent has failed to comply with its duty under Regulation 3 it must under Regulation 10 impose a sanction of up to three times the deposit upon the Respondent.
22. In arriving at an appropriate amount the Tribunal has to exercise its discretion in a way that is fair just and reasonable taking account of all the facts and circumstances known to it. Any sanction has to be proportionate.
23. The Respondent was given an opportunity to present any facts in mitigation and chose not to lodge any written submissions or to attend the Case Management Discussion. The Tribunal was able to ascertain from its own

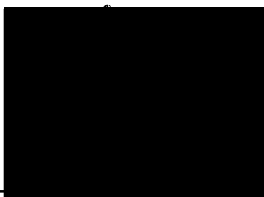
enquiries that the Respondent operated a letting business and had other properties in its portfolio. The Tribunal was therefore satisfied the Respondent was a professional landlord. It was therefore of significant concern that the Respondent had not lodged the Applicants deposit in an approved scheme over a three and a half year period. That, in the Tribunal's view, was a very serious breach and in the absence of any explanation in mitigation the Tribunal concluded that having regard to all the circumstances of the case that a fair, proportionate and just sanction was to award the maximum of three times the deposit namely £3150.00.

### **Decision**

24. The Tribunal determined that the application should be granted and made an order for payment by the Respondent to the Applicants of the sum of £3150.00.

### **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.



Legal Member/Chair

14 November 2019

Date