

**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 10 of the Tenancy Deposit  
Scheme (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/19/3557**

**Re: Property at 109A Sunnyside Road, Aberdeen, AB24 3LT ("the Property")**

**Parties:**

**Mr Jaeden Reppert, residing at G/R, 3 Hillhead Terrace, Aberdeen, AB24 3JE  
("the Applicant")**

**Ms Yang Hu, residing at 26 Cedar Court, Ashgrove Road, Aberdeen, AB25 3BJ  
("the Respondent")**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined to make an order for payment against the Respondent in the sum of One thousand two hundred pounds (£1200) Sterling.**

**Background**

- 1** By application dated 31 October 2019 the Applicant sought an order for payment as a result of the Respondent's failure to lodge his deposit in an approved tenancy deposit scheme. In support of the application the Applicant provided a copy of the tenancy agreement between the parties and copy emails from the Applicant to the Respondent. The Applicant's position in terms of the application was that he had paid a deposit of £400 to the Respondent which she had not subsequently lodged in an approved tenancy deposit scheme. The Applicant had contacted the three approved tenancy deposit schemes in Scotland and none of them had a record of receiving payment of his deposit.
- 2** By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on

which to reject the application. A Case Management Discussion was therefore assigned for 7 January 2020.

- 3 A copy of the application paperwork together with notification of the date, time and location of the Case Management Discussion was served personally on the Respondent by Sheriff Officers on 27<sup>th</sup> November 2019.
- 4 The Applicant subsequently emailed the Tribunal to request a postponement of the Case Management Discussion on the basis that he would be out of the country. The Tribunal agreed to the request, there being no apparent prejudice to the Respondent, and therefore the Case Management Discussion was reassigned for the 27<sup>th</sup> January 2020. Notification of the date, time and location of the postponed Case Management Discussion was sent to the Respondent by recorded delivery mail however the letter was returned, marked "not called for". Notification was then resent by first class mail.
- 5 No written representations were received from the Respondent.

### **The Case Management Discussion**

- 6 The Case Management Discussion took place on 27<sup>th</sup> January 2020. Mr Reppert, the Applicant, was in attendance. The Respondent did not attend. The Legal Member was satisfied that she had received proper notification of the application and the date, time and location of the Case Management Discussion and therefore determined to proceed in her absence.
- 7 Mr Reppert explained that he had received no contact from Ms Hu since leaving the tenancy. He wasn't sure if she was even aware he had left to be honest. Mr Reppert confirmed as reflected in the application that he had spoken to the Letting Protection Service Scotland who had his details but did not have any record of having received the deposit from Ms Hu. He confirmed he had paid the deposit on 18<sup>th</sup> August 2018. Mr Reppert explained that he had told the Respondent by email that he was leaving on 2<sup>nd</sup> August 2019 however unfortunately the email hadn't sent. He had subsequently re-sent the email message. He received no response from Ms Hu to his notice of termination. Around mid-October Mr Reppert had contacted the three tenancy deposit schemes, who had no record of his deposit. He then emailed Ms Hu and advised her he would be applying to the Tribunal.
- 8 Mr Reppert explained that the lack of response from Ms Hu was typical of her conduct of the tenancy as a whole. She had ignored her duties as a landlord, and her failure in this regard had culminated in her retention of the deposit. Mr Reppert explained that the last formal contact he had with Ms Hu regarding the tenancy was before or on the day he had moved into the property. Since then he had bumped into her once or twice on the street. However he had



received no official approach or response from Ms Hu in response to issues he had raised regarding the tenancy. He had tried to text her but she had failed to respond.

- 9 Mr Reppert then cited a history of issues regarding the property. When he initially moved in the cooker didn't work. Neither did the heating. Ms Hu had given him a scrap of paper with a number on it to call about the problems with the heating, but this had been discarded in error and she had subsequently refused to respond to him when he raised the issue. Mr Reppert confirmed that he had no heating for the whole time he was in the flat. He had to use a space heater. Mr Reppert also explained that he suffered health issues whilst in the property which he suspected could be a result of contaminated water. He had contacted Ms Hu and asked her to check this. She had again failed to respond. Mr Reppert had then contacted Aberdeen City Council and they couldn't get in touch with her either. Mr Reppert explained that he had made an application to the Tribunal at the time due Ms Hu's failure to comply with the Repairing Standard, but could not proceed with the application as he subsequently left the tenancy.
- 10 Mr Reppert explained that the evidence he had put forward pointed to Ms Hu's repeated failure to comply with her legal duties as a landlord, culminating in her refusal to return the deposit. On that basis he considered that the maximum award would be appropriate and asked the Tribunal to award three times the amount of the deposit as sanction.

### **Findings in Fact and Law**

- 11 The Applicant and Respondent entered into a tenancy agreement dated 23<sup>rd</sup> August 2018 which commenced on 30<sup>th</sup> August 2018.
- 12 In terms of Section 8 of the said Tenancy Agreement the Applicant undertook to make payment of a deposit of £400 to the Respondent.
- 13 The deposit of £400 was paid to the Respondent on 18<sup>th</sup> August 2018.
- 14 In terms of Section 8 of the said Tenancy Agreement the Respondent undertook to lodge the deposit with a tenancy deposit scheme within 30 working days of the start date of the tenancy.
- 15 The Respondent did not pay the deposit into an approved tenancy deposit scheme.
- 16 The tenancy between the parties terminated on 30<sup>th</sup> August 2019.

- 17 The Respondent has retained the deposit of £400 in full.
- 18 The Respondent is in breach of Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011.

### **Reasons for Decision**

- 19 The Tribunal determined the application having regard to the application paperwork and the verbal submissions from the Applicant at the Case Management Discussion. The Tribunal was satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. The Respondent had received proper notification of the application, and the date, time and location of the original Case Management Discussion, the papers having been served upon her personally by Sheriff Officers. She had also received notification of the date of the postponed Case Management Discussion which had been sent to her by first class mail at her known address. The Tribunal was therefore satisfied that she had been given the opportunity to engage in the process but had chosen not to do so.
- 20 The Tenancy Deposit Scheme (Scotland) Regulations 2011 specify clear duties which are incumbent on landlords in relation to tenancy deposits. Regulation 3 requires a landlord to pay any deposit received in relation to a relevant tenancy to an approved tenancy deposit scheme within thirty working days of the beginning of the tenancy. The deposit must then be held by the scheme until it can be repaid in accordance with the requirements of the Regulations following the end of the tenancy. This gives both parties the benefit of the scheme's independent dispute resolution process in order to resolve any dispute that may arise regarding repayment of the deposit.
- 21 The Applicant submits that the Respondent did not pay the deposit into an approved tenancy deposit scheme in accordance with her duties under Regulation 3. In the absence of any evidence from the Respondent to the contrary, the Tribunal accepted that this was an accurate statement of fact. The Tribunal found the Applicant's submissions at the Case Management Discussion to be entirely credible. He was open and honest in his evidence and had clearly been affected by how he had been treated by the Respondent both during and after his tenancy at the address.
- 22 Regulation 9 provides that any tenant may apply to the Tribunal for an order where the landlord has not complied with the duty under regulation 3. Further, under Regulation 10 in the event of a failure to comply, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. Accordingly having been satisfied that the Respondent had failed to comply, the Tribunal then had to consider what



sanction to impose having regard to the particular facts and circumstances of the case.

- 23 The Tribunal noted the purpose of Regulation 10, namely to penalise landlords to ensure they comply with the duty to protect and safeguard tenancy deposits. The provisions of Regulation 10 leave no discretion where a landlord is found to have failed to comply and permit an award of up to three times the deposit where a finding of breach is made.
- 24 The Tribunal considered the requirement to proceed in a manner which was fair, proportionate and just, having regard to the seriousness of the breach. In doing so the Tribunal took into account the fact that the deposit had remained unprotected for the entire term of the tenancy and the Applicant had been denied access to the independent dispute resolution process that would have been available at the end of the tenancy had the deposit been lodged with a tenancy deposit scheme. Instead, the Respondent had been the sole arbiter in determining what sums, if any, should be returned. Not only had she chosen to retain the entirety of the deposit, with no scrutiny around the reasons for this, she had ignored the Applicant's correspondence on the issue. The Tribunal accepted the Applicant's evidence that she had failed to provide any justification whatsoever for retaining the entire sum of the deposit as there had been a complete lack of engagement on her part. The Tribunal considered this to be wholly unacceptable conduct on the part of a landlord.
- 25 The Tribunal concluded that the Respondent's failure to comply with her duties under the 2011 Regulations reflected a pattern of disregard for her responsibilities as a landlord. The Tribunal accepted the evidence from the Applicant at the Case Management Discussion that this was a culmination of a history of problems with her conduct of the tenancy, particular in relation to issues with the repair and condition of the property which had been ignored by her and not addressed. The Tribunal had serious concerns about the Respondent's blatant disregard for her legal duties as a landlord, and the effect this had had on the Applicant, as well as the potential impact on future tenants. The Tribunal considered that the 2011 Regulations were aimed at ensuring landlords who conducted tenancies in such a way as the Respondent had in this case were penalised appropriately, in the hope that this would prevent them from exhibiting the same or similar behaviour in future.
- 26 Balancing the competing factors in the particular facts and circumstances of the application, the Tribunal considered that this was a case where a sanction in the sum of £1,200 would be appropriate, being three times the amount of the deposit. The Tribunal considered the seriousness of the breach to be at the higher end of the scale having regard to the Respondent's conduct, and took into account the fact that no mitigating factors had been put forward by her to satisfy the Tribunal that a lesser amount should be awarded.

27 The Tribunal therefore made an order against the Respondent in the sum of £1,200.

### 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.

Ruth O'Hare

T Legal Member/Chair

27/1/20  
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Date