

# 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) in an application under Regulation 9 of the Tenancy Deposits Scheme (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/19/2371**

Property at 128 Auchinraith Road, Blantyre, G72 0XR ("the Property")

Parties

**Ms Aimee Douglas & Mr Mark McCrae** residing at 18 Coursington Gardens, Motherwell, ML1 1LT

Represented by Mr Bruce Clayson from Hamilton Citizens Advice Bureau ("the Applicants")

And

**Mr Fouad Anis & Mrs Angel Anis**, spouses residing together at Casa Amira, Hyndford, Lanark, ML11 9TD ("the Respondents")

Tribunal Member

**James Bauld – Legal Member**

### **Decision**

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determines that the Respondents should be ordered to make payment to the Applicants of the sum of ONE THOUSAND POUNDS (£1000.00).

### **Background**

2. This application was lodged with the Tribunal on 26 July 2019. In the application, the Applicants seek a payment order in terms of regulations 9 and 10 of the Tenancy Deposits Scheme (Scotland) Regulations 2011 ("the Regulations") in respect of an alleged failure by the Respondents to comply with those regulations.
3. A case management discussion took place on 20 September 2019.

### **The Case Management Discussion**

4. The case management discussion took place at the Glasgow Tribunal Centre in York Street, Glasgow on 20 September 2019. Mr Mark McCrae attended the hearing along with Mr Bruce Clayson. Ms Aimee Douglas did not attend the hearing. Both Respondents were in attendance at the hearing.

5. At the commencement of the hearing, Mr Clayson, the Applicants' representative, advised the Tribunal that the Applicants had made a report to the police of an incident which had allegedly occurred the day before. The Applicants alleged that they had received a telephone call in which violence was threatened against them if they attended at the case management discussion. The Applicants' representative indicated the caller had advised Mr McCrae that they "knew where he lived" and that he should not attend the hearing the next day. The matter has been referred to the police and Mr Clayson indicated that the police were taking the matter seriously. Mr Clayson pointed out that Mr McCrae had attended at the case management discussion. Mr Clayson then indicated that the Applicants were content to proceed with the case management discussion despite the serious nature of the allegation made.
6. The Tribunal member asked all parties whether they wished to proceed with the hearing and all were happy to do so. It was noted that the Respondents denied making the alleged telephone call.
7. The Tribunal thereafter heard from Mr Clayson. He submitted that there had been a clear breach of the regulations. He submitted that there had been a tenancy which started on 31 August 2018 and that a deposit had been paid by the Applicants to the Respondents in the sum of £665.00. That deposit had not been lodged until 24 April 2019. He indicated that the deposit had therefore been unprotected from the start of the tenancy until after the Applicants indicated they intended to leave. Mr Clayson reminded the Tribunal that the purpose of the regulations was to ensure that deposits were placed in a safe place to ensure disputes were adjudicated by the Tenancy Deposits Schemes' dispute resolution procedures and if this was not done then the whole purpose of the regulations was defeated. He noted that the Landlord had lodged written submissions which suggested that they were first time landlords who indicated that their failure to place the deposit into the appropriate tenancy deposit scheme was a genuine mistake. Mr Clayson however submitted to the Tribunal that ignorance of the law was no excuse and that landlords must comply with the law. He further submitted that in his view this failure by the Landlords did not fall into the most serious category which could be dealt with under the regulations. He confirmed that the deposit had been returned at the end of the tenancy and he was happy to accept that it fell below the level of the most serious categories of breach which had been adjudicated by the courts and the Tribunal. He suggested it was an egregious breach and suggested that the appropriate award to be made by the Tribunal should be twice the deposit being £1330.
8. Mr Clayson made reference to some previously decided sheriff court cases including the cases of *Cooper v Marriott* and *Jenson v Fappiano*. He also referred to a recent decision of the Tribunal under reference number FTT/HPC/PR/19/0403. In that case the Tribunal had

awarded the maximum amount and Mr Clayson submitted this was not as serious a breach. The tribunal was aware of these cases.

9. The Tribunal thereafter heard from the Respondents. They indicated that they lodged the deposit after they had been asked by the Tenant, towards the end of the tenancy, which scheme had they lodged the deposit. They indicated they had no idea of the existence of the Tenancy Deposit Scheme and that this was the first time they had ever been landlords. They indicated that they were aware of the requirement to take a deposit because they knew it was to be used in case something happened during the tenancy. On questioning from the Tribunal they accepted that they had previously rented a property in 1990. They also agreed that prior to creating this tenancy they had discussions with a letting agent but decided not to use the letting agent in order to allow a lower level of rent to be paid by the Applicants. Rent was agreed at £665.00 and a deposit of one month's rent was taken. The Respondents indicated they thought that any award made by the Tribunal should not exceed one month's rent being £665.00 and that the Tribunal should accept that they had made an honest and simple mistake.
10. The Tribunal asked the Applicants representative whether he wished to add anything further but he indicated that he was happy that the Tribunal had all the relevant information.
11. The Tribunal thereafter further questioned the Respondents on whether they had been registered as a landlord. It transpired that they had been registered as a landlord with effect from 11 February 2019.

### **Findings in Fact**

12. The Applicants and Respondents were respectively the tenants and landlords under a tenancy agreement in respect of the property.
13. The tenancy commenced on 1 September 2018 and was a private residential tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016. It was a relevant tenancy for the purposes of the Regulations.
14. The agreed rent for the property was £665.00 per month and the Respondents took a deposit of £665.00 from the Applicants.
15. The tenancy ended on 1 June 2019 when the Applicants removed from the property and returned the keys to the Respondents.

16. The Applicants did not lodge the deposit which had been taken until 24 April 2019. The deposit has subsequently been returned to the Applicants.

### **Reasons for Decision**

17. This application related to the failure of the Respondents to place a tenancy deposit within an approved tenancy deposit scheme. The regulations have been in force for a significant number of years. The regulations require landlords to pay tenancy deposits into an approved scheme within 30 working days of the commencement of the tenancy. In this case it was accepted that the landlord had failure to do so. It was agreed by the parties that this was a tenancy which fell within the scope of the regulations and that the landlord accordingly was in breach of the duties contained in regulation 3 of the regulations. Those duties are twofold. There is a requirement to pay a deposit to a scheme administrator and the requirement to provide a tenant with specified information regarding the tenancy deposit. The Respondents failed in both duties.
18. Regulation 9 of the regulations allows to make an application to the Tribunal for a payment in terms of regulation 10 of the regulations in the event of a breach of the regulations by the landlord.
19. In this case, the Tribunal accepts that this was a relevant tenancy, that a deposit was taken and that the landlord failed to make payment of the deposit into an appropriate tenancy deposit scheme. Accordingly the only matter to be determined by the Tribunal is the amount of the payment to be ordered in terms of regulation 10.
20. The Tribunal notes that this decision has been made against the background of the very serious allegation made by the Applicants in connection with the alleged threats of violence made to them. The Tribunal notes that both parties are content that the Tribunal proceeds to determine this application and that in determining this application the Tribunal should simply ignore the information provided with regard to that allegation.
21. The Tribunal has carefully considered whether it should proceed to make an award or whether it should take another option in either postponing consideration of this case pending the outcome of the criminal investigation or remitting the application to a full hearing. Having heard from the parties and noting their position, the Tribunal is content to proceed as requested by the parties to consider the application and to make a decision. The tribunal notes that parties are content that a final decision is made at a Case Management Discussion as permitted by the tribunal procedure rules.

22. Accordingly, the Tribunal requires to determine the amount of the award to be made. The Tribunal notes that the regulations were introduced to safeguard deposits paid by tenants. They were introduced against a background of landlords abusing their position as the holder of deposit moneys. They were intended to ensure that deposits were placed outwith the reach of both the landlord and the tenant and to ensure there was a dispute resolution process accessible to both parties at the end of a tenancy which placed them on an equal footing. The regulations indicate that the Tribunal must make an award of a payment to the tenant of an amount not exceeding three times the amount of the tenancy deposit. There have been numerous decisions from the Tribunal and from the sheriff courts in similar cases. It is clear that the Tribunal has a wide discretion in determining the amount of the award to be made.
23. In one recent Upper Tribunal decision (reference 2019UK39 UTS/AP/19/0023), it was noted that the Upper Tribunal has indicated that it is appropriate for the First-tier Tribunal to differentiate between landlords who have numerous properties and run a business of letting properties and landlords who have only one property which they own and let out. The Upper Tribunal indicated in that decision it was inappropriate to impose similar penalties onto such landlords.
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24. Accordingly, the Tribunal in this case has taken the view that the Respondents do fall within the latter category indicated in that Upper Tribunal decision. The evidence presented to the tribunal suggests that they are landlords who have only one property which they own and let out. They do not use the services of a professional letting agent. The Tribunal accepts that they made a genuine error in failing to lodge the deposit with the scheme owing to their lack of knowledge of relevant tenancy law. The Tribunal accepts the submission made by the Applicants' representative that this failure does not fall at the most serious end of the potential scale of breaches.
25. The Tribunal however does not accept that it merits an award of twice the deposit. The Tribunal takes the view that it falls in the region where an award should be made of approximately one and a half times the deposit and accordingly the Tribunal will make an award of £1000.00 being approximately one and a half times the deposit taken.
26. Accordingly the Tribunal determines to make an award of £1000.00 payable by the Respondents to the Applicants.

## **Decision**

27. The Tribunal awards payment of the sum of ONE THOUSAND POUNDS (£1000.00) to be paid by the Respondents to the Applicants.

## **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.**

Signed .

**J Bauld**

James Bauld, Legal Member

Date 22 October 2019

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