

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

---



**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 ('the Regulations')**

**Chamber Ref: FTS/HPC/PR/18/1408**

**Re: Property at 21 Annan Road, Ayrshire, KA1 3NE ('the Property')**

**Parties:**

**Mrs Amanda Archer, 21 Annan Road, Kilmarnock, Ayrshire, KA1 3NE ('the Applicant')**

**Mr Adrian Deeley, 9 Sinclair Court, Ayrshire, KA3 7TQ ('the Respondent')**

**Tribunal Members:**

**Joseph C Hughes (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that an Order against the Respondent for payment of Nine hundred and fifty pounds (£950) Sterling**

**BACKGROUND**

1. The Applicant attended the Hearing with her supporter, Mr Stewart McClintock. Both gave evidence.
2. The Respondent attended with Ms Andrea McLean, from Lyn-Mar, the Letting Agents. Both have evidence.
3. The Applicant is Tenant of the Property and the Respondent is Landlord of the Property in terms of a Lease between the parties dated 18<sup>th</sup> January 2018.
4. The lease is a Private Residential Tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016.
5. The Applicant paid a deposit of £475 to Lyn-Mar, the Landlord's Agent, on 18<sup>th</sup> January 2018.
6. Lyn-Mar banked this deposit in their Santander clients account on 24<sup>th</sup> January 2018.
7. The Tenant enquired about her deposit on 4<sup>th</sup> June 2018 at which point Lyn Mar discovered the money was still in their Client Account rather than being

paid into Safe Deposits Scotland. The money was transferred and paid into said Scheme on 4<sup>th</sup> June 2018.

8. The Tenant was thereafter provided with the Deposit Protection Certificate by Lyn-Mar, dated 4<sup>th</sup> June 2018

## **THE HEARING**

- 9 The tribunal heard evidence from all attendees. We sought to clarify where the Deposit was lodged prior to being paid into the Scheme. The tribunal was very flexible throughout the hearing and in its procedures. In order to obtain this information we invited the Respondent to access on line banking and their in house finance software (XERO) in order to provide this critical information to the tribunal. This information was shared with the Applicant. This resulted in greater clarity of the facts.

## **FINDINGS OF FACT**

10

- (a) The Applicant is Tenant of the Property and the Respondent is Landlord of the Property in terms of the lease between the parties dated 18<sup>th</sup> January 2018.
- (b) The lease is a Private Residential Tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016.
- (c) The Applicant paid a deposit of £475 to Lyn-Mar, the Landlord's Agent on 18<sup>th</sup> January 2018.
- (d) The Deposit was banked in the client account of Lyn –Mar on 24<sup>th</sup> January 2018.
- (e) The Deposit was paid to Safe Deposits Scotland on 4<sup>th</sup> June 2018.
- (f) The Deposit was paid in the Safe Deposits Scotland more than thirty days after the Tenant had paid the said Deposit to the Landlord's Agent.
- (g) The Respondent accepts that he failed to pay the Deposit to the scheme administrator of an approved scheme.
- (h) There is a breach of the Landlord's duties in respect of the tenant's Deposit.
- (i) The Respondent is not permitted to withhold the tenancy deposit and is in breach of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

## **REASONS FOR DECISION**

11. The Respondent admits that he failed, through his Letting Agent, to lodge the tenancy deposit as required by law in an approved scheme. This deprives the Applicant from seeking recovery of the deposit through the scheme. It is not disputed that the Respondent is in clear breach of his duties as a Landlord in respect of the tenancy deposit.

12. It is appropriate that Order for Payment be granted. The Respondent should pay to the Tenant an amount to reflect the circumstances of the case. The tribunal selected two months rental, namely £950, to be the appropriate amount. The tribunal considered the failure to lodge the tenancy deposit to be a significant breach of the Regulations having regard to the period from 18<sup>th</sup> January 2018 till 4<sup>th</sup> June 2018. The error came to light only when the Applicant made an enquiry where her deposit was on 4<sup>th</sup> June 2018.

The tribunal thank both parties (and their representatives) for their cooperation throughout the Hearing.

## **DECISION**

13. The tribunal granted an Order for payment against the Respondent:

- (j) To pay the Applicant the sum of Nine hundred and fifty (£950) Pounds Sterling in terms of Regulation 10(a) of 2011 Regulations.

## **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.**

Joseph Hughes

Legal member/Chair

1st October 2018  
Date