



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit  
Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/19/2406**

**Re: Property at 14 Scott Street, Motherwell, ML1 1PN (“the Property”)**

**Parties:**

**Miss Michelle Ryan, 5 Grace Wynd, Hamilton, ML3 6QH (“the Applicant”)**

**Mrs Maria Lawrie, 40 Leyland Road, Motherwell, ML1 3FX (“the Respondent”)**

**Tribunal Members:**

**Fiona Watson (Legal Member)**

**Eileen Shand (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent(s) for payment of the undernoted sum to the Applicant(s):**

**Sum of ONE THOUSAND THREE HUNDRED AND FIVE POUNDS (£1305)  
STERLING**

- Background
- 1. An application was submitted to the Tribunal under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. Said application sought an order be made against the Respondent on the basis that the Respondent had failed to comply with his duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).

- The Hearing
2. A Hearing took place on 9 December 2019. Both parties were personally present and representing themselves. A Case Management Discussion (“CMD”) had previously taken place on 21 October 2019 where again both parties had been personally present. At the CMD the Respondent had indicated that she had not been the owner and landlord of the property at the time the deposit had been taken and the lease entered into. Her husband had dealt with matters and he had died in 2010. She was unaware as to whether a deposit had been taken or not. She also wished an opportunity to take legal advice. A Hearing was accordingly fixed.
  3. The Applicants sought an order from the Tribunal on the basis that the Respondent had failed to comply with their duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the 2011 Regulations.
  4. The Applicant submitted that they had entered into a tenancy with the Respondent which commenced 29 September 2007. A copy of the tenancy agreement was lodged with the application. The Applicant paid a £435 deposit to the Respondent and her husband prior to the start of the tenancy. The Applicant vacated the property 10 days prior to her tenancy termination date, on 20 September 2019. The Respondent had attended at the property with her prior to her vacating and indicated that everything was in order. The Respondent had advised her that she intended to sell the property and it would be cleared and cleaned in any event. No issues were raised with her and the Applicant considered the property had been in good order. The Applicant contacted the Respondent thereafter to provide bank details for return of her deposit to be told that it would not be returned due to cleaning and repairs costs incurred. The Applicant had been shocked to be told that her deposit would not be returned. It had still not been returned, nor had it ever been lodged in a tenancy deposit scheme. The Applicant had originally sought only the return of her deposit, however she now wished to seek an award of up to 3 times the amount of the deposit in terms of her right under Regulation 9 of the 2011 Regulations.
  5. The Respondent submitted that she had not been able to see some of the damage to the property when she did the walk around with the Applicant, due to the Applicant’s furniture being present. It was only when the Applicant had fully vacated that she saw the extent of the damage and that the property was dirty. She would have been happy to return the deposit to the Applicant had it not been for the state the property had been left in. The Respondent had not realised that she jointly owned the property with her husband prior to his death in 2010. He had dealt with the tenancy himself up to his death. She accepted that she was indeed a joint owner, and a copy of the title sheet had been lodged. She also accepted that she was named as a joint landlord on the lease, and also had signed same. She accepted that a deposit in the sum of £435 had been taken. She submitted that upon her husband’s death in

2010, she had contacted the local authority and registered in her sole name as landlord for the property. She did not seek any further advice regarding her legal obligations thereafter as landlord.

- Findings in Fact

6. The Tribunal made the following findings in fact:

- (a) The parties entered into a short assured tenancy which commenced 29 September 2017;
- (b) The Applicant paid a deposit of £435 to the Respondent;
- (c) The Respondent failed to lodge the deposit of £475 into an approved tenancy deposit scheme under Regulation 3 of the 2011 Regulations;
- (d) The Respondent failed to provide the statutory information to the Applicant under Regulation 42 of the Regulations;
- (e) The Tenancy ended on 20 September 2019;
- (f) The Deposit had not been returned to the Applicant.

- Findings in Law

7. The Tribunal made the following findings in law:

7.1 The Respondent was in breach of their duties under Regulation 3 of the 2011 Regulations, which states as follows:

*3 (1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—*

*(a) pay the deposit to the scheme administrator of an approved scheme;  
and*

*(b) provide the tenant with the information required under regulation 42.*

*(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.*

*(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—*

*(a) in respect of which the landlord is a relevant person; and*

*(b) by virtue of which a house is occupied by an unconnected person, unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.*

*(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.*

7.2 The Respondent was in breach of their duties under Regulation 42 of the 2011 Regulations, which states as follows:

**42.**—*(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).*

*(2) The information is—*

*(a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;*

*(b) the date on which the tenancy deposit was paid to the scheme administrator;*

*(c) the address of the property to which the tenancy deposit relates;*

*(d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;*

*(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and*

*(f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.*

*(3) The information in paragraph (2) must be provided—*

*(a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or*

*(b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.*

7.3 The Tribunal must grant an order in terms of Regulation 10 which states as follows:

10. *If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—*

*(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and*

*(b) may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to—*

*(i) pay the tenancy deposit to an approved scheme; or*

*(ii) provide the tenant with the information required under regulation 42.*

- Reasons for Decision

8. The Tribunal was satisfied that the Respondent was in breach of their duties under Regulations 3 and 42 as aforesaid. This was by the Respondent's own admission. Whilst the tenancy agreement commenced prior to the introduction of the 2011 Regulations, the obligation to lodge a deposit taken under a pre-existing tenancy agreement was retrospective in terms of Regulation 47 of the 2011 Regulations.
9. The 2011 Regulations were introduced to provide security for tenants in paying over deposits to landlords and to address an issue with some landlords taking tenancy deposits and then failing to pay them back where they were lawfully due at the end of the tenancy. The 2011 Regulations also provide that parties have access to an independent and impartial dispute resolution mechanism within a scheme to address any deposit deductions which require to be considered.
10. By their failure to lodge the deposit into an approved tenancy deposit scheme the deposit was not protected for a period of seven years. The Tribunal considered this to be a significant period of time for a deposit not to have been held securely.
11. The Tribunal noted that the Respondent was aware of her obligation to register as a landlord in her sole right in 2010 following the death of her husband, but did not find it satisfactory that she submitted she knew nothing about her obligations to lodge the deposit in terms of the Regulations when her obligation to do so arose. The Tribunal found it hard to believe that the Respondent was not made aware either by the local authority, or any other source, of the implementation of the said Regulations and her corresponding obligations thereunder in or around 2012. There was significant media coverage of the implementation of the tenancy deposit schemes across the

country in and around 2012, and access to free and readily available information from then and to this day. The Tribunal was not satisfied that there was any good reason for the deposit not having been properly lodged. The Tribunal did not find it satisfactory that the Respondent submitted that she did not take any advice to establish what her legal obligations were as a landlord under a private sector tenancy.

12. Whilst there was clearly a dispute between the parties as to the state of the property at the end of the tenancy and any justification for withholding the deposit, the Tribunal did not consider this to have any relevance to the application at hand. The Tribunal did not consider it reasonable that the deposit had been withheld and not returned to the tenant. By her failure to lodge the deposit with a scheme, she had deprived the tenant of access to a free and impartial scheme arbitration service to determine whether or not the landlord was entitled to withhold said deposit. Regardless of the state of the property at the end of the tenancy, the deposit should have been lodged in a tenancy deposit scheme.

- Decision

13. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent(s) for payment to the Applicant in the undernoted sum:

ONE THOUSAND THREE HUNDRED AND FIVE POUNDS (£1305)  
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### 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.

Fiona  
Watson

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Legal Member/Chair

9/12/19  
Date