

**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 9 of the Tenancy Deposit  
Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/19/1065**

**Re: Property at 90A Murray Terrace, Inverness, IV2 7WY ("the Property")**

**Parties:**

**Miss Karolina Gretz, Mr Matuesz Dariusz Krol, 69 Mile End Place, Inverness,  
IV3 8JH ("the Applicants")**

**Mr James Harrison, UNKNOWN, UNKNOWN ("the Respondent")**

**Tribunal Members:**

**Helen Forbes (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment should be granted in favour of the Applicants in the sum of £1050.**

**Background**

By application dated 3<sup>rd</sup> May 2019, made under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended ("the Rules"), the Applicants applied for an order in terms of Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations"). The Applicants sought an order for £1575, being three times the tenancy deposit.

The parties entered into a tenancy agreement in respect of the Property, commencing on 20<sup>th</sup> August 2016 and ending on 20<sup>th</sup> February 2019. A deposit in the sum of £525 was paid by the Applicants on 20<sup>th</sup> August 2016. The Applicants were informed by the Respondent's representative, Highland Letting Agency, that the deposit was lodged in a deposit scheme. At the end of the tenancy, the sum of £500 was returned to the Applicants by the representative. The Applicants discovered that the Respondent had not lodged the tenancy deposit in any of the tenancy deposit schemes, as required by the Regulations. The Applicants lodged a

copy of the tenancy agreement, responses from the tenancy deposit schemes, a bank statement, screenshots of text communications with the letting agent, and a copy letter sent to the landlord together with recorded delivery evidence.

A Case Management Discussion was set down for 18<sup>th</sup> July 2019. Sheriff Officers were instructed to intimate the hearing on the Respondent at the address given in the application. Intimation was unsuccessful and Sheriff Officers were informed that the Respondent did not live at this address, although a Wendy Harrison, said to be the daughter of the Respondent, lived there.

Service by advertisement on the Respondent was carried out on the First-tier Tribunal for Scotland Housing and Property Chamber website between 10<sup>th</sup> July and 4<sup>th</sup> September 2019 in terms of Rule 6A.

### **Case Management Discussion**

A Case Management Discussion took place on 4<sup>th</sup> September 2019 at the Mercure Hotel, Church Street, Inverness. The Applicants were in attendance. The Respondent was not in attendance. The Tribunal was satisfied that the requirements of Rule 24(1) had been complied with and that it was appropriate to continue with the hearing in the absence of the Respondent.

The Applicant, Miss Gretz, said the Applicants had not met the Respondent at any time during the duration of the tenancy. She noted that the Respondent and the letting agency employee that dealt with them, Ms Wendy Harrison, had the same surname and she wondered if they were related. At the end of the tenancy, the Respondent's letting agent was unable to meet the Applicants for handover of the keys, so a handyman used by the letting agent met the Applicants. They asked him about the deposit, but, despite having papers relating to the tenancy with him, he claimed to know nothing about the deposit.

Thereafter, Ms Gretz attempted to contact the letting agent several times to enquire about the outstanding £25. There was no response from the letting agent, even when she tried a new email address provided by another tenant. A letter was sent to the Respondent stating that the Applicants were having difficulty contacting the letting agent and asking for the return of the full deposit and information regarding the tenancy deposit scheme. There was no response to this letter.

### **Findings in Fact**

1. The parties entered into a tenancy agreement in respect of the Property, commencing on 20<sup>th</sup> August 2016 and ending on 20<sup>th</sup> February 2019.
2. A deposit in the sum of £525 was paid by the Applicants on 20<sup>th</sup> August 2016.
3. The Applicants were informed by the Respondent's representative, Highland Letting Agency, that the deposit was lodged in a tenancy deposit scheme.
4. At the end of the tenancy, the sum of £500 was returned to the Applicants by the representative.



5. The Respondent did not pay the deposit into a tenancy deposit scheme, thus breaching Regulation 3.

### **Reasons for Decision**

The deposit in this case remained unprotected throughout the duration of the tenancy, a period of two and a half years. The Tribunal considered the failure to lodge the deposit in accordance with the Regulations a serious matter. There were no mitigating circumstances before the Tribunal to explain this serious breach of the Regulations. The Tribunal considered it fair and reasonable to grant an order in the sum of £1050, which is two times the tenancy deposit.

### **Decision**

An order for payment is granted in favour of the Applicants in the sum of £1050.

### **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.**

Helen Forbes  
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**Legal Member/Chair**

4 September 2019  
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**Date**