

**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.**

**Chamber Ref: FTS/HPC/PR/18/2706**

**Re: Property at 83B New Row, Dunfermline, Fife, KY12 7DZ (“the Property”)**

**Parties:**

**Ms Samantha Forsberg, 36 Southerton Road, Kirkcaldy, KY2 5NB (“the Applicant”)**

**Mr Robert Turnbull, Mrs Mary Turnbull, 75 Aller Place, Livingston, EH54 6RG (“the Respondents”)**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member) and Jane Heppenstall (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:**

**This matter called for a Hearing at 10am on 14 May 2019 at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy.**

**The Applicant was not present and was represented by Mr Taylor, solicitor. The Respondents were not present but were represented by Ms Sandi Turnbull who was their daughter-in law and accounts manager.**

**The Tribunal noted that despite this matter being due to call as an evidential Hearing, no parties had brought witnesses. Instead, it appeared that parties wished the Tribunal to make its decision based on competing submissions. The Tribunal noted that this was unsatisfactory as this matter required the resolution of a factual dispute as per the relevant notes on the Case Management Discussion dated 29 November 2019 produced in respect of this Application.**

The Tribunal sought to establish again from parties what their respective positions were.

The Applicant sought an order under Regulation 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 in respect of a deposit that was paid to the Respondents on 11 May 2009. As referred to, there had been a Case Management Discussion on 29 November 2018 in respect of this matter where it had been advanced on behalf of the Respondents that at the time the deposit in question was paid, the Applicant was not party to the tenancy and had not in fact paid the deposit. Accordingly it was said that Regulation 10 was not engaged and no order should be made.

The Respondents had been directed to set out more detailed particulars of that defence within 21 days. They had failed to do so. Today, they explained that they had not complied with this direction because they recently parted company with their solicitors and they had not been informed of the requirements of any such direction.

In any event, after discussing matters with both parties, it seemed that today the facts of the matter could be agreed without the need for evidence to be heard.

Those facts were that, there had been a tenancy between Chris Turnbull and Cameron Will dated 10 October 2008. This was then amended on 17 April 2009 to become a tenancy between Robert Turnbull and Cameron Will and Samantha Forsberg. A further tenancy was then entered into between Robert Turnbull and Samantha Forsberg on 1 April 2014. Samantha Forsberg then left the tenancy which came to an end on 16 July 2018. It was agreed that a deposit of £650.00 was received by the landlords on 11 May 2009. Accordingly it was agreed that when the deposit was received by the Respondents, the Applicant was party to the tenancy.

Ms Turnbull accepted that the Respondents had breached their obligations to the Applicant in respect of Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 in that they failed to register the deposit received by them on 11 May 2009 with an approved scheme at the point they became legally obliged to following the enactment of the Regulations.

This was now accepted by all parties and led the Tribunal to consider that accordingly there was now no factual dispute which required witnesses to be called and evidence led. The Tribunal heard further submissions from parties regarding how this matter should be disposed of.

On behalf of the Applicant, it was submitted that this was a case where the Applicant was a "*tenant who had paid a deposit*" within the meaning of Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 and accordingly the Tribunal should make an award in respect of Regulation 10 awarding her an amount equal to three times the amount of the tenancy deposit.

The Tribunal invited Ms Turnbull to address the Tribunal on any mitigating factors. Ms Turnbull's position was, in essence, that the Respondents were ignorant of the law and did not intend to breach any regulations but simply did not know what the law demanded of them.

The Tribunal noted that whilst this may very well be true, it could not properly said to be a mitigating factor. The authority in the cases of *Fraser vs Meehan 2013 S.L.T. (Sh Ct) 119* and *Cooper vs Marriot 2016 S.L.T (Sh Ct) 99* supported the position that ignorance could be said to be an aggravation rather than a defence or mitigation in respect of these matters.

The Tribunal also noted, after enquiring with Ms Turnbull, that the First Respondent, Mr Turnbull, owned eight properties and had held investment properties for many years. It appears in practice that the management of these properties had now been delegated to Ms Turnbull. The Tribunal therefore considered that there was no meaningful mitigation put forward. The Tribunal considered that the Respondents business as landlords was clearly a fairly substantial operation and accordingly it was very concerning that they were ignorant of the regulation of their own sector. The Tribunal also noted that the First Respondent still retained the deposit of £650.00 which had never been paid into an approved scheme. The Tribunal considered that this was highly unsatisfactory.

After hearing further submissions from parties the Tribunal inquired whether the Respondents would be able to pay the deposit that they still currently held into an approved tenancy deposit scheme. Ms Turnbull informed the Tribunal that this would not cause a difficulty.

The Tribunal adjourned to consider matters and what order or orders, if any, should be made.

The Tribunal were concerned that the Respondents had sought to defend this Application on the basis that Ms Forsberg was not a tenant at the time the deposit was paid. They had failed to comply with a direction ordering them to provide written particulars of that defence. At the hearing today, they then indicated that they now accepted that the Applicant had paid the deposit and so was entitled to bring this Application. The Tribunal were also concerned that even as of today, the deposit had not been registered with an approved scheme.

The Tribunal considered that these factors generated little sympathy such as might allow the Tribunal to exercise its discretion to do anything other than grant the Application as sought. However the Tribunal also considered that if the Tribunal solely made an award in respect of Regulation 10 (a), the net effect of that may be that the Respondents could still retain the deposit received by them and which they had failed to register.

The Tribunal therefore made orders in respect of Regulation 10 (a) of the Tenancy Deposit Scheme (Scotland) Regulations 2011 awarding the Applicant

the sum of £1,950.00 and a further order in respect of Regulation 10 (b) (i) ordering the Respondents to pay the tenancy deposit sum received of £650.00 into an approved scheme within 21 days.

### 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.

A McLaughlin

\_\_\_\_\_  
Legal Member/Chair

14/5/19  
\_\_\_\_\_  
Date