

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

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**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”)**

**Chamber Ref: FTS/HPC/PR/22/4194**

**Re: Property at Flat 2/1 23 Aberfeldy Street, Glasgow, G31 3NS (“the Property”)**

**Parties:**

**Mr Darren Duncan, 0/1 21 Branklyn Court, Glasgow, G13 1GL (“the Applicant”)**

**Mr Ishrat Aamer, 0/1 26 James Gray Street, Glasgow, G41 3BS (“the Respondent”)**

**Tribunal Members:**

**Karen Moore (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a Payment Order in the sum of ONE THOUSAND EIGHT HUNDRED AND SEVENTY FIVE POUNDS STERLING (£1,875.00) be granted.**

**Background**

1. By application dated between 22 November 2022 and 16 December 2022 (“the Application”), the Applicant applied to the Tribunal for an Order in terms of Regulation 10 of the Regulations. The Application comprised a copy of a tenancy agreement between the Parties with an entry date of 4 June 2022, copy bank statements showing that a tenancy deposit of £625.00 had been paid by the Applicant on 4 June 2022 and copy correspondence from SafeDeposit Scotland, mydeposit Scotland and The LPS Scotland confirming that the tenancy deposit had not been lodged with any of them. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 16 February 2023 at 10.00 by telephone conference. The CMD was intimated to the Parties, and, in particular, was intimated to the Respondent by Sheriff Officer on 5 January 2023.

**Case Management Discussion**

2. The CMD took place on 16 February 2023 at 10.00 by telephone conference. The Applicant took part and was not represented. The Respondent did not take part and was not represented. He did not submit written representations. As the CMD was

intimated to the Respondent by Sheriff Officer on 5 January 2023, the Tribunal was satisfied that the he was aware of the CMD and so proceeded in his absence.

3. The Applicant confirmed the detail of the Application and that he sought the maximum amount of award in terms of the Regulations.

### **Findings in Fact**

4. From the Application and the CMD, the Tribunal made the following findings in fact: -
  - i) There had been a tenancy of the Property between the Parties which began on 4 June 2022 and ended on or around 25 October 2022;
  - ii) A tenancy deposit of £625.00 was paid on 4 June 2022;
  - iii) The tenancy deposit was not lodged with any of the approved schemes;
  - iv) The Respondent did not provide the Applicant with the information required by the Regulations.

### **Decision and Reasons for Decision**

5. The Tribunal had regard to the following Regulations: -

Regulation 3 which states:- *“(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.”*;

Regulation 42 which states *“(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; and*

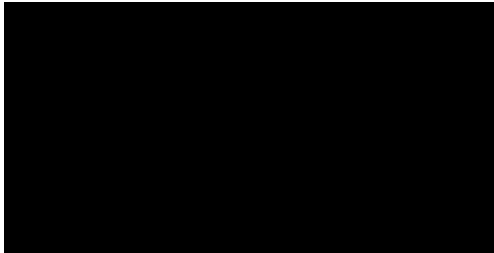
Regulation 10 which states *“If satisfied that the landlord did not comply with any duty in regulation 3 the Tribunal (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit”*

6. From the Findings in Facts, the Tribunal determined that the Respondent had breached both Regulations 3 and 42, in their entirety. Therefore, the Tribunal was bound to make an Order in terms of Regulation 10.

7. The Tribunal took the view that the tenancy deposit was not the Respondent's funds but was the Applicant's funds and, that as the Regulations are in place to protect the Applicants' funds, the Applicants were entitled to that full protection. He was entitled to know where his funds were held and how and when he could access those funds. The Tribunal took the view that the Respondent's failure to comply with the Regulations for was well in excess of the statutory thirty-day time limit and so was at the extreme end of a breach of the Regulations. Accordingly, the Tribunal awarded the Applicant the full three times the deposit as requested by him.
8. Having made that decision, the Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "may do anything at a case management discussion .....including making a decision" and so proceeded to make an order for payment in the sum of £1,825.00.

### **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.**



**Legal Member/Chair**

**16 February 2023**

**Date**