

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/21/1821

Re: Property at 51 Whitelaw Street, Glasgow, G20 0DG (“the Property”)

Parties:

Ms Lauren Reeve - Rawlings, 4 Ardo Gardens, Flat 1/3, Glasgow, G51 2AE and Ms Melissa Reeve - Rawlings, 0/2 44 Grandtully Drive, Glasgow, G12 0DS (“the applicants”)

Mr Chris Mummery, 16 Crown Terrace, Hyndland, Glasgow, G12 9ES (“the respondent”)

Tribunal Member:

David Preston (Legal Member)

Decision:

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

- **The respondent had failed in his duty to pay the deposit paid by the Applicant to the scheme administrator of an approved scheme under Regulation 3(1)(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”); and**
- **Orders the Respondent to pay to the Applicant the sum of £1600 in terms of Regulation 10(a).**

Background:

1. **By application dated 26 July 2021 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 and Regulation 9 of the Regulations the applicant sought an order for payment under Regulation 10.**
2. **By Notice of Acceptance dated 9 August 2021 a legal member of the First-tier Tribunal with delegated powers so to do, accepted the application for determination**

by the First-tier Tribunal and appointed the case to a Case Management Discussion (“CMD”).

3. A CMD took place by telephone on 21 September 2021. Ms Melissa Reeves-Rawlings attended on behalf of the applicants and the respondent attended on his own behalf.

Discussion.

1. The papers before the tribunal comprised: the application dated 26 July 2021; an uncompleted copy of a Tenancy Agreement dated 1 December 2018; representations by the respondent dated 9 September 2021 including two emails from the respondent to mydeposits Scotland; and an email from the respondent to the applicants dated 28 July 2021.
2. The respondent acknowledged and accepted that the deposit had not been placed with an approved deposit scheme. He explained that, as outlined in the copy emails between himself and mydeposits Scotland, he had experienced problems in relation to a deposit relating to a previous tenancy and had decided that he did not want to use them. He accepted that this was not relevant to the current application and presented the information purely by way of explanation that as a result of these difficulties he had overlooked lodging the applicants’ deposit with either my deposits Scotland or any other scheme.
3. The respondent referred to his representations and pointed out that as detailed in his email to the applicants of 28 July 2021 their deposit had been returned to them under deduction of £420 in respect of a number of items which he had found to be missing from the property on checking the inventory. An agreed sum of £277 was included in that deduction being a payment for factoring services to which the applicants had agreed. The deductions in respect of the inventory items therefore total £193. He was unable to confirm whether any subsequent correspondence had taken place by way of a challenge by the applicants for any of the deductions. The tribunal also noted that the respondent maintained that the applicants had failed to fulfil the terms of the lease in relation to maintenance of the garden and that he had not included a deduction in this respect when calculating the balance due to the applicants.
4. The respondent submitted that the applicants had not been disadvantaged in any way by his failure to lodge the deposit with an approved scheme as it had not been at any risk as demonstrated by the fact that it had been accounted for and the balance paid to them.
5. The applicants’ position as outlined in the application was confirmed. They felt that the respondent had failed to fulfil his obligations under the lease. Ms Reeves-Rawlings said that they had taken issue with some of the items in the respondent’s list of deductions, but no account had been taken of these objections. She confirmed that their agreement to the deduction of £277 in respect of the factors fees.

Reasons for Decision:

4. Rule 17(1)(d) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the Tribunal *"may do anything at a case management discussion which it may do at a hearing, including making a decision"*. The Tribunal was satisfied that it had before it all the information it required to make a decision and that it would, therefore do so without a hearing.
5. Regulation 10 of the 2011 Regulations provides that if the tribunal finds that the landlord did not comply with any duty in Regulation 3, the Tribunal *must* order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit.
6. The tribunal is required to exercise discretion in deciding what level of order is appropriate, subject to the maximum of three times the amount of the deposit which would be £4800. This case has come about as a result of an oversight on the part of the respondent.
7. However, the deposit was unprotected in terms of the 2011 Regulations for the duration of the tenancy and the applicants had been denied the opportunity to make use of the dispute resolution provisions under the tenancy deposit system.
8. The respondent was unable to demonstrate whether he had taken any account of the applicants' representations in respect of his proposed deductions and had simply applied them unilaterally.
9. The tribunal was mindful that there was nothing to suggest that the respondent's failure had been wilful, or that he had systematically been in default in respect of a number of properties.
10. In the whole circumstances presented to the tribunal, it considered that while any default of this sort is a serious matter, this failure was not at the most serious end of the scale which would attract the maximum sanction of three times the deposit. It also had regard to the mitigating factors put forward by the respondent and considers that the fair, proportionate and just sanction in this case, having regard to the maximum sanction available, is a sum of One thousand six hundred pounds (£1600), being equivalent to the amount of the deposit.

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.