



**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 2011/176**

**Chamber Ref: FTS/HPC/PR/20/1245**

**Re: Property at 2/2 5 Ruthven Street, Glasgow, G12 9BY (“the Property”)**

**Parties:**

**Mr Efrain Villanueva Castilla, Mrs Graciela Quinones Weiss, 0/2, 59 Bank Street, Glasgow, G12 8NF (“the Applicant”)**

**Mr Ajitpal Dhillon, Providence House, 9 Whittingehame Gardens, 1105 Great Western Road, Glasgow, G12 0AA (“the Respondent”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for payment in the sum of FIVE THOUSAND POUNDS (£5,000)**

**Background**

1. By application received on 4<sup>th</sup> June 2020 the applicants sought an order for payment in terms of Rule 103. The application specifies that the applicants paid a deposit of £1900 to the respondent at the commencement of the tenancy. The applicants seek the maximum award of three times the amount in terms of the regulations.
2. The applicants lodged with the application a tenancy agreement, a bank statements showing a payment of £475 to the respondent on 28<sup>th</sup> September 2019, and a copy of their notice to terminate the tenancy letter.
3. A case management discussion (“cmd”) was held by telephone conference on 17<sup>th</sup> August 2020. The applicants and respondent were present.

4. Another application seeking an order under the Tenancy Deposit Regulations had been raised against the respondent namely under reference FTS/HPC/PR/20/1069. In a Direction dated 15/6/20 the Chamber President directed that these cases be heard together in line with the Tribunal's overriding objective.

#### **Case Management Discussion – teleconference - 17<sup>th</sup> August 2020**

5. The respondent sought an adjournment of the CMD so that he could obtain legal representation and to allow him time to lodge certain documents. In relation to the question of legal representation the respondent advised the Tribunal that he had tried to secure legal representation, but it had not been possible as no lawyers were available. The Tribunal did not accept the respondent's explanation as to why he was unable to secure legal representation. The Tribunal noted that the respondent had been aware that the cmd was taking place on the present date since 17<sup>th</sup> July 2020 which allowed him ample time to secure legal representation. The Tribunal noted that a discussion around documents which required to be lodged could take place during the CMD. The Tribunal therefore refused the respondents motion to adjourn the cmd and proceeded with the discussion.
6. The applicants confirmed that they signed a tenancy agreement with a commencement date of 1<sup>st</sup> October 2019. A copy of the lease had been lodged prior to the CMD. The applicants advised that two separate payments were made to cover the deposit of £1900, a payment of £475 on 28<sup>th</sup> September 2019 and £1425 on 30<sup>th</sup> September 2019.
7. The applicants advised that they left the tenancy on 30<sup>th</sup> April 2020. They gave written notice of their intention to terminate the lease on 29<sup>th</sup> March 2020. In terms of paragraph 23 of the tenancy agreement 28 days' notice was required. Accordingly, they had complied with the lease.
8. The applicants confirmed that they had been in the tenancy for seven months. They confirmed that they had paid rent for the duration of the tenancy in addition to the deposit of £1900 paid at the commencement of the tenancy.
9. The respondent did not dispute that he had received the amount of £1900 from the applicants prior to the commencement of the tenancy. He sought to rely on paragraph 10 in the tenancy agreement which details the amount of the deposit. He drew the Tribunal's attention to the fact that no amount had been included for the deposit. The respondent advised that the applicants had paid rent for the duration of the lease. He advised that no deposit had been received. He advised that he was landlord of a number of properties. He advised that in some cases he chose not to take a deposit from tenant.
10. The CMD was adjourned for bank statements showing the payments made to the respondent since the tenancy commenced to be lodged.

#### **Case management conference –teleconference - 2<sup>nd</sup> October 2020**

11. The legal chair who had heard the previous CMD also chaired the CMD on 2<sup>nd</sup> October 2020.

### **Preliminary matter 1**

12. On the afternoon of 1<sup>st</sup> October 2020, the respondent emailed the Tribunal to advise that he was not in a fit state to attend the CMD as he had news that he had been in contact with a student who had Covid-19. He advised that he was not feeling well and had booked a covid test and asked if the CMD could be changed to another date. The Tribunal treated this as a request to adjourn the CMD.
13. The Tribunal asked the respondent to provide proof that he was being tested. On the morning of the CMD the respondent sent a screenshot to the Tribunal with confirmation that he had requested a home test that he would receive within the next few days. The respondent telephoned the Tribunal and spoke to the clerk on the morning of the CMD. He advised that he wasn't well and left the call. The clerk attempted to call the respondent back on two occasions however, the respondent did not answer.
14. The applicants opposed the adjournment. Mrs Weiss advised that she is employed part-time as a tutor. She had to cancel classes in order to attend the CMD. She would face a loss of earnings if the CMD was adjourned. She had to give her line manager two weeks' notice so that cover could be arranged for her tutorials. She advised that they had complied with the law and it would be a cause of further stress if the matter dragged on.
15. The Tribunal refused the application to adjourn. The Tribunal was not satisfied that the respondent had medical reasons for being unable to attend the CMD. The Tribunal took the following matters into account in reaching their decision:
  - i. The respondent had not contacted the Tribunal until the afternoon before the scheduled CMD to advise that he had been in contact with someone with Covid-19.
  - ii. The respondent had lodged confirmation that he had requested a home test which would arrive within a few days. No test was scheduled to clash with the CMD.
  - iii. The CMD was via teleconference. Unless the respondent was so unwell, he could not use a telephone, he would be expected to attend via telephone.
  - iv. The respondent provided no evidence that he was so unwell that he was unable to attend via telephone. The Tribunal clerk had spoken with the respondent shortly before the CMD commenced before the respondent ended the call.
  - v. A further adjournment of the CMD would result in loss of earnings for Mrs Weiss.

### **Discussion**

16. Prior to the CMD the respondent had lodged a bank statement showing various payments received from the applicants. The Tribunal went through the statement in detail with the applicants. The Tribunal noted that the statement lodged by the respondent showed payments of £1900 made by the respondents for the months of October 2019, November 2019, January 2020, February 2020, March 2020 and April 2020.

17. A payment of £1500 was shown for December 2019. A payment of £1425 showed for 30<sup>th</sup> September 2019.
18. The applicants advised that they had made a further payment of £400 in December 2019 which was not visible on the lodged statement. They drew the Tribunal's attention to the fact that the document had clearly been cut which, provided an explanation for the missing payment of £400.
19. The applicants submitted that a bank statement lodged with the application showed an additional payment of £475 paid to the respondent on 28<sup>th</sup> September 2019.
20. Taking into account the two additional payments the applicants submitted that they had paid seven full months rent plus an additional £1900 in respect of a deposit.
21. The applicants also referred to a WhatsApp conversation which they had lodged prior to the CMD in which the respondent specifically referred to a deposit, which contradicted his stated position at the previous CMD that he had not received any deposit.
22. The applicants stated that the respondent's failure to return the deposit had caused financial hardship. They had terminated the tenancy as their income had reduced due to the impact of the corona virus pandemic. They could no longer afford their rent. Without the deposit, the options for alternative properties was reduced. Ms Weiss confirmed that had the £1900 deposit been returned they would likely have secured a more spacious tenancy than they currently occupy. The applicants also described how the failure to return the deposit had impacted them at a time of acute financial and personal stress due to the serious illness of a family member in Mexico and their requirement to provide financial support to cover medical expenses. The loss of a significant amount of money added to an already difficult situation.
23. Mrs Weiss stated that when she asked for the deposit to be returned the respondent had admitted that he had not placed the deposit in an appropriate scheme. Mrs Weiss had sought to negotiate with him and said she would agree to the deposit being returned within four weeks. The respondent had advised Mrs Weiss that she would get her deposit back when he rented the property again. Mrs Weiss formed the impression that the next tenant's deposit would not be placed in a deposit scheme but used to repay their deposit.
24. Mrs Weiss advised that the respondent rented out another property within her building and she was aware that he was also the landlord of a number of other properties in Glasgow.
25. Mrs Weiss stated that she had found the process of seeking the return of the deposit extremely stressful. She stated that she found the respondent to be intimidating. She had seen him behave in an aggressive manner towards other tenants.

## **Findings in Fact**

26. The parties entered into a tenancy agreement with a commencement date of 1<sup>st</sup> October 2019.
27. The tenancy terminated on 30<sup>th</sup> April 2020.
28. The monthly rent payable was £1900.

29. The applicants paid a deposit of £1900 to the respondent.
30. The respondent failed to place the deposit in a tenancy deposit scheme.
31. The respondent has not returned the deposit to the applicants.
32. The respondent is a landlord of multiple properties.

## **Reasons for Decision**

33. The Tribunal took into account the applicants' written and oral submissions, the written submissions of the respondent and his submissions at the previous CMD. The Tribunal also took into account the bank statements lodged by parties, the WhatsApp messages lodged by the applicants and the documents lodged with the application.
34. The Tribunal heard the case alongside another case seeking orders under the Tenancy Deposit Regulations raised against the respondent under reference FTS/HPC/PR/20/1069.
35. The Tribunal found the applicants to be credible and saw no reason to disbelieve their submissions.
36. The Tribunal noted that the documents lodged demonstrated that the applicants had paid a deposit of £1900 prior to the commencement of the tenancy.
37. The Tribunal noted that the documents lodged showed that the applicants had made payments of rent throughout the duration of the tenancy. The statements showed a shortfall of £400 for the rent payable for December 2019. The Tribunal accepted the applicants evidence that the payment had been made but was not showing on the respondent's bank statement as the relevant section of the statement was missing.
38. The Tribunal found the respondent's statement at the earlier CMD that he had not received a deposit to be untrue. The Tribunal placed the reliability and credibility of the respondent in question.
39. The Tribunal had regard to its findings in case reference FTS/HPC/PR/20/1069. In that case the respondent had also failed to use a tenancy deposit scheme or return the deposit to the tenants. The Tribunal noted that the respondent had failed to adhere to the regulations on more than one occasion.
40. The Tribunal took into account that the respondent was an experienced landlord of multiple properties. He had been aware of his duties under the Tenancy Deposit Regulations and had chosen not to comply with that duty.
41. The Tribunal took into account that the deposit had not been returned to the applicants. This had impacted their financial circumstances and the type of tenancy they were able to obtain after they moved out of the property.
42. The Tribunal took into account the stress placed on the applicants as a result of their negotiations with the respondent.
43. The Tribunal noted that the tenancy had a duration of seven months during which the deposit was unprotected.
44. Taking the above factors into consideration the Tribunal determined that the respondent's breach of the regulations was at the more serious end of the

scale and it was reasonable in the circumstances to make an order for payment in the sum of £5,000.

### **Decision**

45. The Tribunal determined to grant an order for payment in the sum of FIVE THOUSAND POUNDS (£5,000)

### **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.**

**M.C K**

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**Legal Member: Mary Claire Kelly**

**2<sup>nd</sup> October 2020**  
**Date**