



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Regulations 3 and 10 of the Tenancy  
Deposit (Scotland) Regulation 2011**

**Chamber Ref: FTS/HPC/PR/20/2555**

**Re: Property at 7 Victoria Road, Falkirk, FK2 7AU (“the Property”)**

**Parties:**

**Mr Aaron Iwaniec, Mr Alistair Ross, 7 Victoria Road, Falkirk, FK2 7AU (“the Applicant”)**

**Mr Chris Wieczorek, 2 Melville Street, Falkirk, FK1 1HZ (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the amount of £390 should be made.**

**Background**

The Applicants, on 9<sup>th</sup> December 2020, lodged an application with the Tribunal under Rule 103 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“The Regulations”) alleging that the Respondent has not lodged the tenancy deposit in an appropriate scheme in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“TDS”).

Along with the application the Applicants lodged a copy of the tenancy agreement. They also confirmed, when asked, that they still tenanted the property.

The Application was served on the Respondent by Sheriff Officer on the 5<sup>th</sup> February 2021. The method of service was leaving the documentation with his wife.

## **Case Management Discussion**

The Case Management Discussion ("CMD") took place by teleconference on 4<sup>th</sup> March 2021. The Applicants did not dial in to the call. The Respondent did dial in. The Clerk, Miss Taylor, telephoned the Applicants on the number they had given on the application. She called twice. Each call was answered but the person answering then hung up.

The Chairperson was satisfied that the Applicants had been given proper notice of the hearing in terms of Rule 24(1). They had been written to on 1<sup>st</sup> February 2021 at the property address.

The Chairperson explained to the Respondent the purposes of a CMD in terms of the Tribunal's rules. She also explained that the Rules did not provide for an application being dismissed if the Applicants did not attend the CMD. She explained that Rule 29 allowed her to deal with the case in the absence of a party on the representations of any party present and all the material before the Tribunal. She explained that the Applicants had stated their case in their application.

The Respondent was very candid. He said that he had not deposited the tenancy deposit in an approved scheme until he received service of this application. He had done so immediately on receipt. He explained that the Respondents had been in the property since before the commencement of the tenancy agreement which they had lodged. They had not been able to meet the previous rent and the Respondent had reduced it and they entered in to a new tenancy agreement. The Applicants had not been able to afford the deposit in a lump sum and had paid it up at £50 per month.

The Respondent said that the Applicants were in arrears with their rent. In 2020 they applied to Falkirk Council for housing. The Respondent was asked for a reference. He provided one confirming that the Applicants were in arrears. Their application to Falkirk Council was refused. They were not happy with the Respondent.

The Respondent appreciated that the deposit should have been placed in a scheme and apologised for not doing so. He said that he was an ex-serviceman and suffered from PTSD, which meant he could be forgetful. He has twelve properties which he rents out. Four of those are rented through letting agents. The other eight are rented to ex-service people and he does not take deposits from them.

## **Findings in Fact**

1. The parties entered on to a tenancy agreement in respect of the property;
2. The Applicants paid a deposit of £390;
3. The Applicants had been given proper notice in terms of Rule 24(1);
4. The Applicants still reside in the property;
5. The deposit was not lodged in an approved scheme in terms of the Tenancy Deposit (Scotland) Regulations 2011;
6. The Respondent has now lodged the deposit in an approved scheme.

## **Reasons for Decision**

The Respondent admitted that he had breached Regulation 3 of the Regulations. The Tribunal has absolute discretion, in terms of Regulation 10, in deciding what penalty should be imposed for a breach of the regulations.

The Tribunal considered the whole circumstances of the matter. The Respondent was candid about his breach and had remedied it as soon as he received service of the application. He suffers from PTSD and gave this as his reason for forgetting to lodge the deposit. The Applicants did not join the call and therefore could not contradict any of the Respondent's evidence.

The reasoning for the Tenancy Deposit Scheme's existence is to protect Tenants from Landlords taking a deposit from them and then getting into financial difficulties meaning that they can't pay it back at the end of the tenancy, and also to provide a scheme for mediation in relation to any disputes about damage etc when the tenant leaves.

The Tribunal took the view that this breach was not at the serious end of the scale and the Respondent had remedied it as soon as it was brought to his attention. The Tribunal decided that a payment of one times the deposit being the sum of £390 should be paid by the Respondent to the Applicant.

## **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 Kelly

**4<sup>th</sup> March 2021**

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**Legal Member/Chair**

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**Date**

