



**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/21/0181**

**Re: Property at 1/2 524 London Road, Glasgow, G40 1DU (“the Property”)**

**Parties:**

**Miss Louise Baxter, Mr Benjamin Byrne, 6 St Andrews Drive, Bearsden, Glasgow, G61 4NW (“the Applicant”)**

**Miss Nicola O’neill, Flat 3/2 68 Silvergrove street, Glasgow, G40 1DR (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted against the Respondent and in favour of the Applicants in the sum of £937.50.**

**Background**

1. By application received in the period between 25<sup>th</sup> January and 9<sup>th</sup> February 2021 and made under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”), the Applicants applied for an order in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”). The Applicants lodged a copy of the tenancy agreement between the parties, copy notifications from the three approved tenancy deposit schemes and screenshots of electronic communications made between the parties.
2. By two emails dated 1<sup>st</sup> March 2021, the Respondent lodged written representations.
3. By email dated 1<sup>st</sup> March 2021, the Applicants lodged written representations.

## **The Case Management Discussion**

4. A Case Management Discussion ("CMD") took place by telephone conference on 7<sup>th</sup> April 2021. All parties were in attendance.
5. The Applicants set out their case as reflected in the application, namely that the parties entered into a short-assured tenancy agreement in respect of the Property which commenced on 1<sup>st</sup> March 2017 and ended on 18<sup>th</sup> December 2020. A deposit in the sum of £625 was paid by the Applicants to the Respondent prior to the commencement of the tenancy.
6. At the end of the tenancy, during discussions and investigations regarding the return of the deposit, the Applicants discovered that the deposit should have, and had not, been lodged in an approved tenancy deposit scheme.
7. The Respondent said that she had been renting the Property for five years, and she has had three tenants. The previous tenants have been friends and family and she did not believe that the Regulations applied in those cases. In this case, it was her position that there was a signed private agreement between the parties that she would hold the tenancy deposit in an account, separate from her current account, and that it would not be lodged with a tenancy deposit scheme. Responding to questions from the Tribunal, the Respondent said she believed this to be preferable, easier and quicker than lodging the deposit with a tenancy deposit scheme. The Respondent said she was aware of the tenancy deposit scheme.
8. The Applicants said they had not signed any agreement other than the tenancy agreement. They were unaware of the existence of the Regulations until the tenancy had ended.
9. Given that the Respondent agreed that she had breached the Regulations, the Tribunal turned to the matter of the amount of payment to be awarded.
10. The Respondent said she had learned from her mistake and would not be repeating it. She has a new tenant and she complied with the Regulations by lodging their deposit immediately. She is a reasonably new landlord. She had a good relationship with the Applicants as tenants and always attended to repairs when necessary. She has now returned the deposit as the result of a separate application to the Tribunal by the Applicants. The Respondent said that any award made should be small.
11. The Applicants said that they felt nothing had been done legally in this case. There was no inventory and the Property was not clean when they moved in. They did not specify an amount in regard to any award made.

## Findings in Fact

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- (i) The parties entered into a tenancy agreement in respect of the Property that commenced on 1<sup>st</sup> March 2017 and ended on 18<sup>th</sup> December 2020.
  - (ii) A tenancy deposit of £625 was paid to the Respondent by the Applicants prior to the commencement of the tenancy.
  - (iii) The deposit was not lodged with an approved tenancy deposit scheme and remained unprotected throughout the duration of the tenancy.
  - (iv) The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.

## Reasons for Decision

13. The Applicants' deposit was not lodged with an approved tenancy deposit scheme within 30 days of the commencement of the tenancy as required by Regulation 3. The deposit remained unprotected for a period of almost three years.
14. The Regulations were put in place to ensure compliance with the tenancy deposit scheme, and to provide the benefit of dispute resolution for parties. The Tribunal considers that its discretion in making an award requires to be exercised in the manner set out in the case *Jenson v Fappiano (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015* by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case. The Tribunal must consider the facts of each case appropriately.
15. The Tribunal took guidance from the decision of the Upper Tribunal UTS/AP/19/0020 which states: '*Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals.*'
16. The Tribunal considered this to be a serious matter, with the deposit unprotected throughout the duration of the tenancy.
17. The Tribunal took into account the mitigating circumstances put forward by the Respondent. However, the Tribunal felt that there had been a failure by the Respondent to recognise her responsibilities as a landlord, particularly given that she was aware of the Regulations.

18. Taking all the circumstances into account, the Tribunal decided it would be fair and just to award a sum of £937.50 to the Applicants, which is one and a half times the tenancy deposit.

### **Decision**

19. The Tribunal grants an order against the Respondent for payment to the Applicants of the sum of £937.50 in terms of Regulation 10(a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

### **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.**

**H. Forbes**

**Legal Member/Chair**

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**7<sup>th</sup> April 2021**  
**Date**