



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)  
Act 2014**

**Chamber Ref: FTS/HPC/PR/21/0478**

**Re: Property at 18 Luss Brae, Hamilton, ML3 9UP (“the Property”)**

**Parties:**

**Mr Graham Millar and Mrs Denise Millar, 18 Luss Brae, Hamilton, ML3 9UP (“the Applicants”)**

**Mr Gary Jamieson, Woodlands, Ryelands, Strathaven, ML10 6QF (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Angus Lamont (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent failed to comply with his duty as a Landlord in terms of Regulations 3 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) as amended by The Housing (Scotland) Act 2014 (Consequential Provisions) Order 2017 by failing to pay the Applicants’ Tenancy Deposit to the scheme administrator of an Approved Tenancy Deposit Scheme and in failing to provide the Applicants with the required information, grants an Order against the Respondent for payment to the Applicant of the sum of NINE HUNDRED POUNDS (£900) Sterling.**

**Background**

1. This is an application for an order for payment for where it is alleged the Respondent has not paid a deposit into an approved scheme or provided the required information under the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The application is made under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. The application was accompanied by a copy of a Tenancy Agreement between the Applicants and Margaret McInnes commencing on 12 March 2012 and various text messages between the parties.

3. On 1 April 2021 the Respondent lodged a response that he had given the required information about the deposit to the Applicants in 2016. He also attached a copy email from Margaret McInnes dated 31 March 2021 in which she stated the deposit was lodged on 21 May 2015 with My Deposit Scotland under Certificate Number 54118. Further text messages and various items of correspondence and submissions were lodged by both parties and accepted by the Tribunal although late.
4. A Case Management Discussion ("CMD") went ahead on 27 April 2021 by way of teleconference. Both the Applicants and the Respondent appeared on their own behalf.
5. In brief the Applicants' position was they had entered into the tenancy with Margaret McInnes on 1 March 2012 and had paid her a £600 deposit. They had no information the deposit had been paid into a tenancy deposit scheme. Mrs McInnes texted the Applicants on 30 April 2017 to advise the Respondent was now the landlord. They contacted him to ask where the deposit was held, but he had never given them any information about whether the deposit had been placed into a scheme. When they received a copy of the Respondent's submission of 1 April 2021 with a copy of the My Deposit Scotland Certificate DPC54118 which showed Mrs McInnes as the landlord, the Applicants had attempted to access the My Deposit Scotland website, but were unable to do so on the information provided. They had not called My Deposit Scotland for assistance. Their position was the Respondent as landlord had not provided them with any information that their deposit had been lodged in a scheme in his name as landlord.
6. The Respondent's position was that when the tenancy agreement commenced in 2012 he had been in hospital and had asked Mrs McInnes, his mother in law and business partner, to act as landlord. He accepted the Applicants had paid her £600 on 1 March 2012. Mrs McInnes had paid the deposit into My Deposit Scotland in 2015 and had given information about the deposit to the Applicants at the time it was lodged. The deposit was still held there in her name and was therefore protected in My Deposit Scotland. There was a transitional period in 2016 when he started to become involved in the tenancy. The first direct contact he had with the Applicants was in May 2017 when amongst other things he told Mr Millar where the deposit was held. He did not put that in writing. The tenancy was the same. He had tried to get the Applicants to sign a new tenancy agreement in his name, but they had refused to do so.
7. There was no dispute that a £600 deposit had been paid to Mrs McInnes on 1 March 2012 under the tenancy agreement lodged and that at some stage the Respondent became the landlord. The Tribunal decided to assign a hearing to determine -

- i. when the Respondent become the landlord;
  - ii. whether and when the Applicants were asked to sign a new tenancy agreement in the Respondent's name and if they had refused to do so;
  - iii. whether any refusal by the Applicants to sign a tenancy agreement with the Respondent had any impact on the application of the 2011 Regulations;
  - iv. in whose name the deposit was held, where it was held, the date it was lodged and the certificate number of the deposit;
  - v. whether the deposit was protected in terms of the 2011 Regulations;
  - vi. whether the Respondent required in terms of the 2011 Regulations to ensure the deposit was held in his name and if so, at what date was he required to do so and;
  - vii. whether the Respondent required to provide the Applicants in writing with information about the deposit when he took over as landlord in terms of the 2011 Regulations.
8. The Tribunal produced a Note on the CMD which was sent to both parties. The Tribunal also issued two Notices of Direction requiring any documents the parties wished to rely on to be lodged in terms of the Practice Note on the lodging of documents issued by the Tribunal President. Both parties helpfully did so and lodged Lists of Documents with copy documents fully listed and numbered. Some of these had already been lodged by parties sporadically and in no order and some were new documents.
9. The Respondent also intimated to the Tribunal that due to his health condition he had asked Mrs Margaret McInnes to represent his case at the hearing.

### **The Hearing**

10. The hearing went ahead on 3 August 2021 by way of teleconference. Mr Millar appeared for himself and his wife. Mrs McInnes appeared for the Respondent. Neither party had any other witnesses, but both gave evidence in support of their respective positions.

### **Mr Millar's evidence**

11. Mr Millar gave evidence. He referred to production 25 on his List of Documents. This was a tenancy deposit certificate from My Deposits Scotland. The certificate number was DPC284652. It showed the Respondent as named landlord and that the deposit had been lodged on 21 May 2015. Mr Millar was perplexed that as showing the deposit had been protected since then in the Respondent's name. He had not been aware of that. He then referred to production 26 on his List of Documents. This was an email dated 27 April 2021 from Mr McInnes to the Respondent. This email stated –

*“After checking my records this has already been sent to Mr and Mrs Millar also My Deposits Scotland also confirmed they were notified. I apologise I*

*didn't know the name had to be changed to yours didn't give it a thought because I'm only at the other end of the phone the Millers would when ready to apply for their deposit would have no problem with access to any refund due."*

Mr Millar felt the certificate in the Respondent's name was an attempt by the Respondent to show the deposit had been protected in his name since 21 May 2015. However that could not be the case as on 21 May 2015 the landlord was Mrs McInnes.

12. Mr Millar stated the Respondent became the landlord in July 2016. He referred to production 4 on his List of Documents. This was a title sheet LAN208917 which showed from 10 January 2011 the Respondent owned a half share of the Property and that from 19 July 2016 he owned the whole of the Property. His position was this showed that from 19 July 2016 the Respondent became the landlord. The Tribunal explained it accepted on the basis of that evidence the Respondent had become sole owner of the Property in July 2016 and that he had been a part owner to the Property from 2011. However that did not show he also became the landlord as at that date. There was nothing to prevent an owner giving permission to another party to allow that party to act as landlord. The Tribunal referred to the submissions made by the Respondent at the CMD that he had asked Mrs McInnes to act as landlord. The Tribunal wanted to establish the date the Respondent took over as landlord.
13. Mr Millar referred the Tribunal to production 1 on his List of Documents. This was a text message dated 30 April 2017 from Mrs McInnes which advised the Respondent was now the landlord. He accepted that as of that date the Respondent became the landlord.
14. He referred to production 2 on his List of Documents. This was a series of text messages with the Respondent with one in particular from Mr Millar which stated "*The council are getting the details of the complaint tomorrow u haven't complied with any regulations gas, electricity, no rent book, rent deposit scheme etc c u in court*". To put this in context, Mr Millar explained he had contacted the Respondent about various matters in May 2107 and had asked where the deposit was held. Mr Millar advised the Respondent had never given them any of the required information about whether the deposit had been placed into a scheme.
15. Mr Millar also referred to production 24 on his List of Documents. This was the envelope that production 25, the tenancy deposit certificate had been sent in. The envelope was post marked 9 July 2021. This was when the Applicants first knew their deposit had been lodged with My Deposits Scotland. He referred to production 25 being the certificate number DPC284652 in the Respondent's name. This was not the same certificate lodged at production 27 which was certificate number DPC54118 in the name

of Mrs McInnes. He pointed out the date of lodging the deposit was the same on both certificates.

16. The Tribunal questioned Mr Millar about his state of knowledge with regards to the deposit and asked him to look at production 26 on his List of Documents. The Tribunal referred to an email which appeared below the email from Mrs McInnes to the Respondent dated 27 April 2021 which he had referred to earlier in his evidence. This was an email also dated 27 April 2021 from My Deposits Scotland headed Certificate. It read –

*“Good afternoon.*

*Thank you for your recent correspondence.*

*Please find(sic) attached a copy of the certificates you requested.*

*A text message we sent to the tenants on 21/05/2015 notifying them that the deposit had been protected.”*

Mr Millar explained to the Tribunal he had never received a text message from My Deposits Scotland in 2015. He advised that he would not have known if a text had been received from My Deposits Scotland as it would be from an unknown number. He had not received or viewed any text from them. He had received an email from My Deposits Scotland on 21 June 2021 that the deposit was held in the Respondent's name. His position was therefore his deposit was not protected until 21 June 2021, a period of approximately four years and two months after the Respondent became the landlord.

17. The Tribunal asked further questions of the Applicant about whether or not his position was the deposit was safeguarded. Mr Millar explained that whilst it appeared the deposit was lodged in May 2015 he could not understand the reference on certificate number DPC54118 in the name of Mrs McInnes(production 27)which showed the start date of the tenancy as 1 September 2013 and the end date of the tenancy as 1 March 2014. That was not accurate. He stated he was confident now that at the end of the tenancy he will be able to contact My Deposits Scotland about the deposit, but does not believe the deposit will be returned to them. He explained after the CMD he contacted My Deposits Scotland and referred the Tribunal to production 9 on his List of Documents. He explained this was a note he had taken of his conversation with My Deposits Scotland. They advised him the Respondent was down as a “secondary landlord” and that details could not be amended once deposited. They advised him they had no email or telephone number for the Applicants. He had declined to give My Deposits Scotland his contact details. He was asked about whether he had attempted to access the tenancy deposit information from My Deposits Scotland website. He advised they had attempted to do so on the information given on certificate number DPC54118 in the name of Mrs McInnes but had been unable to get access. They had not received a copy of certificate number DPC54118 in the name of Mrs McInnes. Mr Millar re-iterated the only certificate they had received was

on 21 June 2021 by email in the name of Mr Jamieson (production 25). They had received nothing before then. He also explained that although they had gone to Shelter in 2017 for help on the deposit, Shelter had not been able to help them at that time. Mr Millar confirmed when the tenancy was transferred into the Respondent's name that was the only thing that changed as the rent had not increased and all other conditions remained the same.

18. Mrs McInnes then questioned Mr Millar. She stated she had sent him details of the deposit in May 2015 as she did for all her tenants. Mr Millar denied this. She asked him whether he had received information from My Deposits Scotland in 2015. Mr Millar queried how they could do so as they did not have his email address. Mrs McInnes explained they had his phone number and that My Deposits Scotland had texted him in 2015 to advise where the deposit was held. Mr Millar denied this.

#### Mrs McInnes's evidence

19. Mrs McInnes gave evidence. She explained she did not understand the reference to the Respondent being a "secondary landlord" in the Applicants' production 9. Her position was there was no secondary landlord. The tenancy was in her name only. She explained that she had jointly owned the Property with the Respondent when the tenancy started. When the Respondent had started to feel a bit better the Property was transferred into his sole name. She had always had the Respondent's full authority to act as landlord. She accepted she should have put the deposit into an approved scheme before 21 May 2015. She explained that after she lodged the deposit, she personally posted a copy of the certificate together with all the required information, including My Deposits Scotland's phone number to the Applicants at the Property address. In response to a question from the Tribunal she explained she had 5 properties and about 7 tenants and she always sent copies of the certificates and the required information.
20. Mr Millar also questioned Mrs McInnes. He referred to her evidence that she had posted the Applicants a copy of the certificate and required information and asked her if she had any proof of that. She advised she did not. He asked what role she had in the Property. She explained she had no role but was there to help the Respondent if he needed help. Mr Millar asked whether she was involved in another Tribunal matter. She again explained that if the Respondent needed assistance with e.g. administrative tasks she would help him. She explained the Respondent suffers from stress and PTSD following upon an injury sustained in active service in which he lost three limbs so she was always happy to help him. There was nothing sinister in that. Mr Millar asked what date she had sent them the information in 2015. She advised she did not know the exact date but she had put a note at the top of their tenancy agreement that it had been sent.
21. Mr Millar questioned her further with regards to production 27 and put it to her the information on the certificate was wrong. In response Mrs McInnes

accepted there were errors and apologised for these. Mr Millar suggested to her she was also wrong about sending them the information in 2015. Mrs McInnes denied this. She explained she had input information to My Deposits Scotland and when she had been contacted by the Respondent she had made arrangements for the protection of the deposit to be transferred from her name into Mr Jamieson's name. She was not aware she should have done so and thought it was only new tenancies that the scheme applied to and did not realise that the deposit should have been transferred into his name.

22. With regard to any prejudice the Applicants had suffered Mr Millar was firmly of the opinion that his wife would not have suffered a recent stroke had they had some certainty of where their deposit was held. He asked the Tribunal to use their full powers to make sure this did not happen again.

### **Findings in Fact**

23. The Applicants entered into a tenancy agreement with Margaret McInnes on 1 March 2012 to rent the Property. They paid Mrs McInnes £600 deposit on 1 March 2012.
24. The Respondent and Mrs McInnes were joint owners of the Property on 1 March 2012. Mrs McInnes is the Respondent's mother in law and business partner. The Respondent became sole owner of the Property on 19 July 2016. The Respondent's title is under title sheet LAN208917.
25. The Respondent gave full authority to Mrs McInnes to act as landlord in her sole name.
26. Mrs McInnes lodged the Applicants' deposit with My Deposits Scotland on 21 May 2015. The deposit was protected in her name with My Deposits Scotland under Certificate Number DPC54118.
27. My Deposits Scotland texted the Applicants on 21 May 2015 to advise their deposit was protected with them.
28. Mrs McInnes sent a copy of the tenancy deposit certificate and required information to the Applicants after she lodged the deposit in May 2015.
29. On 30 April 2017 Mrs McInnes intimated to the Applicants that she was no longer the landlord. She advised the Applicants by text message on 30 April 2017 the Respondent was now the landlord.
30. The Respondent became the landlord under the tenancy agreement as of 30 April 2017. The Applicants remained as tenants. The tenancy continued on the same terms and conditions as previously when Mrs McInnes was landlord.

31. The Applicants asked the Respondent for information of where their deposit was held in or about May 2017. The Respondent did not formally respond to the Applicants.
32. From 30 April 2017 to 21 June 2021 the deposit was held in Mrs McInnes name. The Respondent did not arrange with Mrs McInnes to transfer the deposit from her name to his name. Further the Respondent did not issue the Applicants with the required information.
33. The Respondent with the help of Mrs McInnes arranged for the deposit to be held in his name with My Deposits Scotland on or about 21 June 2021. My Deposits Scotland emailed the Applicants on 21 June 2021.
34. The Applicants' deposit is protected in the name of the Respondent with My Deposits Scotland under certificate DPC284652.

### **Reasons for decision**

35. For the purpose of Regulation 9(2) of the 2011 Regulations an application where a landlord has not paid a deposit into a scheme administrator must be made within three months of the tenancy ending. The Tribunal found that the application was made in time, as the tenancy was continuing.
36. Whilst much of the evidence focused on the fact Mrs McInnes did not place the deposit within a scheme administrator until 21 May 2015, over three years after the tenancy had started, this application does not proceed against her. Both parties accepted that the Respondent became the landlord on 30 April 2017.
37. Regulation 3 (1) and (2) of the 2011 Regulations provides –
- “(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.*

The Tribunal accept the deposit was not paid direct to the Respondent. However, when the Respondent took over the tenancy from Mrs McInnes on 30 April 2017 the duty in terms of Regulation 3 passed to him to ensure any

deposit was held under his name. Mrs McInnes was no longer the landlord. The Respondent was. Regulation 3 (3) provides –

*“(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—*

*(a) in respect of which the landlord is a relevant person; and*

*(b) by virtue of which a house is occupied by an unconnected person,*

*unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.*

*(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.*

Regulation 2 assists in the interpretation of the 2011 Regulations. It provides “the 2004 Act” means the Antisocial Behaviour etc. (Scotland) Act 2004. Section 83(8) of the 2004 Act provides a “relevant person” means a person who is not a local authority, a registered social landlord or Scottish Homes.

Regulation 2 also provides that “landlord” refers to a landlord, within the meaning conferred by the Act, of a relevant tenancy. “The Act” is defined as the Housing (Scotland) Act 2006. Section 194 of the Housing (Scotland) Act 2006 defines “landlord” as meaning any person who lets a house under a tenancy.

The provisions of Regulation 3 when read with the provisions of Regulation 2 with reference to the further provisions of section 83(8) of the 2004 Act and section 194 of the 2006 Act firmly place the obligation on the Respondent as landlord. As of 30 April 2017 the Respondent was the landlord who let the Property under the tenancy agreement. As such he was under an absolute duty to transfer the deposit into his name within 30 working days of the beginning of his tenancy with the Applicants. He did not do so until about 21 June 2021. The Respondent is accordingly in breach of Regulation 3 of the 2011 Regulations.

38. It follows that the Respondent did not provide the information under Regulation 42 as required by Regulation 3(1) (b). Whilst the Tribunal accept the Applicants were advised by both Mrs McInnes and My Deposits Scotland that the deposit paid by them was paid to My Deposits Scotland, it does not follow that amounted to the provision of information by the Respondent when he became landlord to the Applicants. The Respondent could e.g. transferred the deposit to another scheme administrator for all the Applicants knew. What is relevant however is that the Applicants did not know what had happened to their deposit. If they knew it had been protected with My Deposits Scotland up to

that point, they did not know what had happened to the deposit as the Respondent did not provide them with any information at all.

39. There was no evidence led by either party on whether the Respondent had asked the Applicants to sign a new tenancy agreement when he became landlord. It is of no relevance whether he did or whether the Applicants refused to do so. Parties were clearly in a landlord/tenant relationship and no evidence was led by either party to suggest otherwise.
40. The 2011 Regulations were intended, amongst other things to put a landlord and a tenant on equal footing with regard to any tenancy deposit and to provide a mechanism for resolving any dispute between them with regard to the return of the deposit to the landlord or tenant or divided between both, at the termination of a tenancy.
41. The amount to be paid to the Applicants is not said to refer to any loss suffered by the Applicants. Accordingly, any amount awarded by the Tribunal in such an application cannot be said to be compensatory. The Tribunal in assessing the sanction level has to impose a fair, proportionate and just sanction in the circumstances, always having regard to the purpose of the 2011 Regulations and the gravity of the breach. The Regulations do not distinguish between a professional and non-professional landlord such as the Respondent. The obligation is absolute on the landlord to pay the deposit into an Approved Scheme.
42. In assessing the amount awarded, the Tribunal has discretion to make an award of up to three times the amount of the deposit, in terms of Regulation 10 of the 2011 Regulations.
43. The Tribunal considered the Respondent's failure to comply with the 2011 Regulations was not wilful. It appeared to the Tribunal that due to his health difficulties the Respondent was reliant to a large extent on Mrs McInnes helping him in administrative tasks. She had not transferred the deposit into the Respondent's name when the Respondent became landlord. She had apologised for this and appeared to be genuine when she stated she had not realised that the deposit had to be transferred as it was not a new tenancy. However, Mrs McInnes's involvement in the Respondent's administrative affairs does not exonerate the Respondent from his duties under the 2011 Regulations.
44. The Tribunal did not accept Mr Millar's evidence that he had received no information in 2015 from either Mrs McInnes or My Deposits Scotland that their deposit had been lodged. My Deposits Scotland's email of 27 April 2021 confirmed they had sent a text to the Applicants on 21 May 2015. While Mr Millar challenged Mrs McInnes on the veracity of her evidence that she had sent them the required information in May 2015 (whose evidence the Tribunal accepted), the Tribunal was of the opinion that as an approved scheme

administrator, My Deposits Scotland would not make a false representation about their text to the Applicants on 21 May 2015. The Tribunal was also at a loss to understand why Mr Millar could not access Certificate Number DPC54118 through the My Deposits Scotland website. Nevertheless the Tribunal accepted the Applicants would have experienced a degree of anxiety in not knowing what had happened to their deposit after 30 April 2017 when the Respondent became their landlord even in the knowledge that the deposit had been with My Deposits Scotland up to that point.

45. The Applicants had the right to be advised of the prescribed information and unfortunately they had not been provided with this. It appeared the relationship between the parties had deteriorated fairly quickly after the tenancy had started. However that was not a reason for the Respondent not to formally advise the Applicants where the deposit was held in his name. The fact was that the deposit was not held in his name. It continued to be held in the name of a third party who was no longer the landlord after 30 April 2017.

46. Despite the Tribunal being satisfied that the Respondent had failed to comply with his duties under Regulations 3 (1) of the 2011 Regulations, the purpose of the 2011 Regulations had not been defeated. The Respondent had made arrangements with Mrs McInnes for the deposit to be transferred from her name into his name with My Deposits Scotland who had issued a new Certificate Number DPC284652 on 21 June 2021. However the deposit was not held in his name for a period of over 4 years.

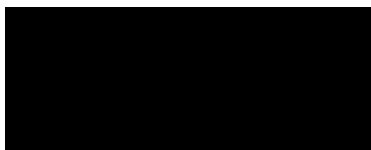
47. In all the circumstances, the Tribunal considered that a fair, proportionate and just amount to be paid to the Applicant was £900

### **Decision**

48. The Tribunal accordingly made an Order for Payment by the Respondent to the Applicant of £900. The decision of the Tribunal was unanimous.

### **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.**



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**Legal Chair**

**15 August 2021**

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**Date**