



**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/21/0943**

**Re: Property at 11 Welbeck Crescent, Troon, KA10 6AS (“the Property”)**

**Parties:**

**Ms Andrea Nouillan, Flat 2, 35 Ayr Street, Troon, KA10 6EB (“the Applicant”)**

**Mr Les Martin, 9 Links Crescent, Barassie, Troon, KA10 6SS (“the  
Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Mr A Khan (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that an order for payment should be granted in favour of  
the Applicant in the sum of £1350.**

**Background**

1. This is an application received on 19<sup>th</sup> April 2021, made in terms of Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The Applicant is seeking an order for payment of £1350 in respect of the Respondent’s alleged failure to lodge a tenancy deposit of £450, paid in two sums on 25<sup>th</sup> April and 20<sup>th</sup> May 2011, in an approved tenancy deposit scheme.
2. Parties entered into a short assured tenancy that purports to commence on 1<sup>st</sup> June 2011. The Applicant lodged a copy of the tenancy agreement, copy cheque stubs, a bank letter, and copy notifications from three approved tenancy deposit schemes stating that no deposit was lodged.
3. By email dated 12<sup>th</sup> May 2021, the Applicant made written representations.
4. A Case Management Discussion took place by telephone conference on 10<sup>th</sup> June 2021. Both parties were in attendance. The Applicant said that the

tenancy commenced on 22<sup>nd</sup> May 2011 and ended on 19<sup>th</sup> January 2021. On 25<sup>th</sup> April 2011, she paid £200 towards the £450 deposit set out in the tenancy agreement. On 20<sup>th</sup> May 2011, she paid £350 which was made up of £250 towards the deposit and £100 to cover the additional period from 22<sup>nd</sup> May to 1<sup>st</sup> June 2011. Thereafter, the rent was paid by standing order on the 2<sup>nd</sup> of each month. The Applicant photocopied the cheque stubs for the two cheque payments onto the front page of the lease. She has attempted to recover the original cheques from Santander, but they no longer hold the cheques.

5. The Respondent's position was that he had no recollection of any deposit being paid. He did not accept that the £550 paid was a deposit. As far as he was aware, the Regulations were not in force at the commencement of the tenancy. The Respondent accepted that the tenancy agreement provided that a deposit will be paid. The Respondent said he had lodged deposits for all his properties. He is a highly respected landlord, and had a good relationship with the Applicant until a few months before the tenancy ended. He could not see why he would not have lodged the deposit for this property. He handed over responsibility for the Property to a third party agency some years ago. The Respondent said he had attempted to access bank information but information from the start of the tenancy is no longer held by the bank.
6. The Tribunal continued matters to a hearing. The agreed matters were as follows:
  - (i) The tenancy commenced on 22<sup>nd</sup> May 2011.
  - (ii) The tenancy ended on 19<sup>th</sup> January 2021.
  - (iii) No deposit was lodged with an approved tenancy deposit scheme.
7. By email dated 11<sup>th</sup> June 2021, the Applicant submitted written representations and productions.
8. Parties were notified by letter dated 16<sup>th</sup> June 2021 that a hearing had been set down for 26<sup>th</sup> July 2021, to take place by telephone conference.
9. By email dated 19<sup>th</sup> July 2021, the Applicant submitted written representations and productions.

## **The Hearing**

10. A hearing took place by telephone conference on 26<sup>th</sup> July 2021. The Applicant was in attendance. The start time of the hearing was delayed to allow the Respondent to join the telephone conference, but the Respondent did not attend. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the hearing together with details on joining the telephone conference. The Tribunal determined that the requirements of Rule 24 had

been satisfied and that it was appropriate to proceed with the application in the absence of the Respondent.

11. The Applicant said she had been surprised that the Respondent did not agree that she had paid a deposit when the case last called. She felt that the Respondent was being untruthful. She had lodged emails from the Respondent dated 19<sup>th</sup> and 21<sup>st</sup> May 2011 that indicated the Respondent was aware at the time that a deposit had been paid in two instalments on 25<sup>th</sup> April 2011 (£200) and 20<sup>th</sup> May 2011 (£250). On the latter date, she also paid £100 to cover the additional rent from 22<sup>nd</sup> May to 1<sup>st</sup> June 2011, and this was reflected in the emails. The Applicant said she was a good tenant and always paid her rent on time.
12. Regarding the fact that the deposit was not lodged, the Applicant said she did not know why that was. The Respondent has other properties and these are managed by a letting agent. The Regulations were in place at the time the deposit was paid and it was referred to in the tenancy agreement. She suggested the reason he may not have lodged it was because he managed the Property himself. She was a good tenant and it may be the case that he wished to save the letting agent fees by managing the Property himself.
13. The Applicant submitted that a full award of three times the tenancy deposit should be made by the Tribunal. Responding to questions from the Tribunal, she said she had been put to considerable trouble in chasing up this matter. She is a single parent, caring for an elderly relative. It took time for her to compile the application. She is suffering from anxiety and felt this matter had tipped her over the edge. She understood that the Tribunal would not be able to order return of her deposit as part of this application. She indicated that she was considering a further application to the Tribunal in respect of the deposit and further matters.

### **Findings in Fact and Law**

14.
  - (i) The parties entered into a tenancy agreement in respect of the Property which commenced on 22<sup>nd</sup> May 2011.
  - (ii) On 25<sup>th</sup> April 2011, the Applicant paid £200 towards a tenancy deposit of £450 to the Respondent by cheque.
  - (iii) On 20<sup>th</sup> May 2011, the Applicant paid £250 towards a tenancy deposit of £450 to the Respondent by cheque.
  - (iv) On 20<sup>th</sup> May 2011, the Applicant paid £100 to the Respondent to cover the rental period from 22<sup>nd</sup> May to 1<sup>st</sup> June 2011.
  - (v) The tenancy ended on 19<sup>th</sup> January 2021.

- (vi) The tenancy deposit was not lodged with an approved tenancy deposit scheme and remained unprotected throughout the duration of the tenancy.
- (vii) The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.

### **Reasons for Decision**

15. The Tribunal considered all the information before it, including the representations made by the Respondent at the Case Management Discussion.
16. The Tribunal found that the emails produced by the Applicant indicated that a tenancy deposit was paid by the Applicant and that the Respondent was aware that this was the case.
17. The Regulations came into force on 7<sup>th</sup> March 2011, before the commencement of the tenancy. The Applicant's 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 throughout the duration of the tenancy.
18. 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 by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case.
19. 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.'*
20. The Tribunal considered this to be a case at the most serious end of the scale. The deposit was unprotected throughout the duration of the tenancy, a period of over nine and a half years. The Tribunal took into account that this was an experienced landlord with other properties, who was aware of the Regulations. Despite the tenancy agreement stating that a deposit was payable, the Respondent had denied that a deposit was paid. The Tribunal noted that the Respondent had said at the Case Management Discussion that he did not know why he had not lodged the deposit. The Tribunal felt that the Respondent ought to have been aware of the Regulations as an experienced landlord. The Tribunal took cognizance of the fact that the Respondent lodged deposits for his other properties. The Tribunal felt that there had been a failure

by the Respondent to recognise his responsibilities as a landlord. There was simply no good reason before the Tribunal for his failures.

21. The Tribunal took into account the significant stress and inconvenience caused to the Applicant by having to pursue this matter.

22. Taking all the circumstances into account, the Tribunal decided it would be fair and just to award a sum of £1350 to the Applicant, which is three times the tenancy deposit.

### **Decision**

23. An order for payment in the sum of £1350 is made in favour of 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.**

**Legal Member/Chair**

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**26<sup>th</sup> July 2021**  
**Date**