



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy  
Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/22/0125**

**Re: Property at Milton, Kildrummy, Alford, Aberdeenshire, AB33 8QY (“the  
Property”)**

**Parties:**

**Miss Melissa Grieff, Milton, Kildrummy, Alford, Aberdeenshire, AB33 8QY (“the  
Applicant”)**

**Mr Gordon Gauld, May Duncan, Bankhead Croft Cottage, Midmar, Inverurie,  
AB51 7QD; The Muirs, By Kildrummy, Huntly, AB54 4JU (“the Respondents”)**

**Tribunal Members:**

**Graham Harding (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the Applicant was entitled to an order for payment by  
the Respondent to the Applicant in the sum of £1300.00**

**Background**

1. By application dated 14 January 2022 the Applicant complained to the Tribunal that the Respondents were in breach of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The Applicant claimed the Respondents had failed to lodge her deposit in an approved scheme for a period of over five years. The Applicant submitted a copy of her tenancy agreement and a copy of a Notice to Leave which had been served on her.
2. By Notice of Acceptance dated 19 January a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondents by Sheriff Officers on 11 February 2022.
4. By letter dated 24 February 2022 and received by the Tribunal on 1 March 2022 the Respondents submitted written representations.

### **The Case Management Discussion**

5. A CMD was held by teleconference on 25 March 2022. Both parties attended in person.
6. The parties confirmed that they had entered into a Short Assured Tenancy Agreement and that the tenancy had commenced on 1 December 2015 and continued until 30 November 2016 and from year to year thereafter.
7. The parties agreed that the rent was £650.00 per month and that the Applicant had paid a deposit of £650.00 at the commencement of the tenancy.
8. The Tribunal noted that there was with the papers a purported Notice to Leave dated 30 December 2021 that had been served on the Applicant by the Respondents in terms of Ground 1 of Schedule 3 of the Private Housing (Tenancies) Scotland Act 2016 but also noted that the Applicant's tenancy was a Short Assured tenancy under the Housing (Scotland) Act 1988. In any event the Tribunal did not consider that the Notice to Leave had any bearing on the application.
9. The Respondents confirmed that they were the registered landlords of the property and in response to a further query from the Tribunal, Mr Gauld explained that they had been registered as landlords in January 2022 following communications from Aberdeenshire Council.
10. Mr Gauld went on to say that he had taken steps to lodge the Applicant's deposit with Safe Deposits Scotland immediately after they had been served with the case papers by Sheriff Officers on 11 February 2022.
11. Mr Gauld advised the Tribunal that the required information in terms of Regulation 42 of the 2011 Regulations had been sent to the Applicant on 18 February 2022. After some discussion the Applicant confirmed she had received the required information on 22 February.
12. Mr Gauld accepted that the Respondents had been in breach of Regulation 3 of the 2011 Regulations and that the Applicant's deposit had been unprotected for more than six years. He said it had been kept in a bank account and was therefore quite safe. The Respondents said they had been totally unaware of the requirement to place the deposit in an approved scheme. They said they had not taken any legal advice when deciding to rent out the property and they had also been unaware of the need to be registered as landlords until contacted by the council.

13. Mr Gauld explained that he was a retired Architectural Technician and Ms Duncan said she was a housewife. The Respondents said the property was the only property that they had for rent.
14. The Tribunal referred the Respondents to their written submissions and to their comments regarding unpaid rent and explained to them that this did not have any relevance to the matters for consideration by this Tribunal.
15. Ms Duncan suggested that as the Applicant was familiar with living in rented property, she ought to have raised the issue of the deposit earlier than she had. The Tribunal queried with Ms Duncan if she was trying to attribute blame for the deposit not being lodged in a scheme in some way on the Applicant but Ms Duncan said this was not what she meant.

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

16. The Parties entered into a Short Assured Tenancy that commenced on 1 December 2015 and endured until 30 November 2016 and was renewed thereafter from year to year by tacit relocation.
17. The Applicant paid a deposit of £650.00 to the Respondents at the commencement of the tenancy.
18. The Respondents failed to lodge the deposit in an approved Tenancy deposit Scheme within 30 working days in terms of Regulation 3 of the 2011 Regulations.
19. The Respondents failed to provide the prescribed information in terms of Regulation 42 of the 2011 Regulation within 30 working days in terms of Regulation 3.
20. The Applicant's deposit was finally lodged in an approved scheme on 18 January 2022.
21. Intimation of the deposit being lodged and provision of the prescribed information was received by the Applicant on 22 February 2022.
22. The Respondents registered as landlords in the Scottish Landlord Register in January 2022.
23. The Respondents have only one property that they rent out.
24. The Respondents did not seek any legal advice prior to renting out their property in December 2015.

### **Reasons for Decision**

25. The Tribunal was satisfied that the application was timeous as the Applicant is still a tenant in the property.
26. The Respondents accepted that they had been in breach of Regulation 3 of the 2011 Regulations.

In terms of Regulation 10 of the Regulations it is stated:-

"If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal - (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit;"

Having admitted a breach of the Regulations the Tribunal is obliged to make an order against the Respondent.

In determining the amount payable by the Respondent to the Applicant the Tribunal took into account the following:-

- (i) The Respondents are not professional landlords and only rent out one property.
- (ii) At the time of renting out the property they made no attempt to seek legal advice or advice from anyone on what might be the legal requirements expected of a landlord.
- (iii) The Applicant's deposit remained unprotected for more than six years.
- (iv) Throughout that period the Respondents were unregistered landlords.
- (v) On being made aware of the requirement to place the deposit in an approved scheme the Respondents took immediate steps to comply with the regulations.

27. In the case of *Tenzin v Russell* 2015 Hous. L. R. 11, an Extra Division of the Inner House of the Court of Session confirmed that the amount of any award in respect of regulation 10(a) of the 2011 Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case. Although the Respondents did not wilfully ignore the law in this case, they nonetheless made no attempt to familiarise themselves with any of the legal requirements that might be incumbent upon them when renting out a property. That in the view of the Tribunal is a serious omission. Furthermore, the Applicant's deposit remained unsecured for over six years during which time had the Respondents been sequestrated the Applicant's funds could have been lost. The Tribunal did however accept that on finally realising that they were expected to lodge the deposit in a scheme the Respondents took immediate steps to do so. Taking everything into account the Tribunal was satisfied that a fair, proportionate and just sanction was one that reflected the serious nature of the matter but fell short of being at the upper end of the scale and determined that the Applicant was entitled to an order for payment in the sum of £1300.00.

## **Decision**

28. The Tribunal being satisfied that it had sufficient information before it to make a decision without the need for a hearing and having carefully considered the parties written and oral submissions finds the Applicant entitled to an order for payment by the Respondent in the sum of £1300.00.

## **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.**

**Graham Harding  
Legal Member/Chair**

**25 March 2022  
Date**