



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

**Chamber Ref: FTS/HPC/PR/22/1277**

**Re: Property at 24 Poplar Grove, Dunfermline, KY11 8AT (“the Property”)**

**Parties:**

**Mr Mark Foster, 27 Tuke Street, Dunfermline, KY12 0PP (“the Applicant”)**

**Mr Philip Robert Murphy, whose current whereabouts are unknown (“the Respondent”)**

**Tribunal Members:**

**Fiona Watson (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for payment of the undernoted sum to the Applicant:**

**Sum of SEVEN HUNDRED POUNDS (£700) STERLING**

- Background
  1. An application was submitted to the Tribunal under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought an order be made against the Respondent on the basis that the Respondent had failed to comply with his duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).

- The Case Management Discussion

2. A Case Management Discussion (“CMD”) took place on 13 September 2022 by teleconference. The Applicant attended personally. There was no appearance by or on behalf of the Respondent. Service of the papers on the Respondent by Sheriff Officer had been unsuccessful and accordingly the papers were served by website advertisement between 15 August 2022 to 13 September 2022 in terms of Rule 6A of the Rules.
3. The Applicant sought an order from the Tribunal in the sum of £700, on the basis that the Respondent had failed to comply with their duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the 2011 Regulations.
4. The Applicant submitted that they had entered into a tenancy with the Respondent which commenced 1 December 2021 and ended 30 April 2022. The agreement was for the rental of one room within a shared house. No written tenancy agreement was ever provided by the Respondent. The Applicant paid a £350 deposit to the Respondent prior to the start of the tenancy. The deposit was not placed into any of the approved tenancy deposit schemes in Scotland. The Applicant vacated the property on 6 April 2022. The Applicant gave the Respondent 28 day’s notice of his intention to vacate but the Respondent claimed that the Applicant must give one month’s notice tying in with the end of the month, being a longer period, and thus be liable for payment of rent during that time up to 30 April 2022. There was no written agreement in this regard. The Respondent returned the deposit to the Applicant less £50 as a deduction for repainting he claimed was required in the bedroom (and the necessity of which was denied by the Applicant).

- Findings in Fact

5. The Tribunal made the following findings in fact:

- (i) The parties entered into a private rented tenancy which commenced 1 December 2021;
- (ii) The Applicant paid a tenancy deposit of £350 to the Respondent;
- (iii) The Respondent failed to lodge the deposit of £350 into an approved tenancy deposit scheme under Regulation 3 of the 2011 Regulations;
- (iv) The Respondent failed to provide the statutory information to the Applicant under Regulation 42 of the Regulations;
- (v) The Tenancy ended on 30 April 2022;
- (vi) The Deposit has been returned to the Applicant less a £50 deduction.

- Findings in Law

6. The Tribunal made the following findings in law:

6.1 The Respondent was in breach of their duties under Regulation 3 of the 2011 Regulations, which states as follows:

**3** (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.

(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.

6.2 The Respondent was in breach of their duties under Regulation 42 of the 2011 Regulations, which states as follows:

**42.**—(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).

(2) The information is—

(a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;

(b) the date on which the tenancy deposit was paid to the scheme administrator;

(c) the address of the property to which the tenancy deposit relates;

(d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;

(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and

*(f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.*

*(3) The information in paragraph (2) must be provided—*

*(a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or*

*(b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.*

6.3 The Tribunal must grant an order in terms of Regulation 10 which states as follows:

*10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—*

*(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and*

*(b) may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to—*

*(i) pay the tenancy deposit to an approved scheme; or*

*(ii) provide the tenant with the information required under regulation 42.*

- **Reasons for Decision**

7. The Tribunal was satisfied that the Respondent was in breach of their duties under Regulations 3 and 42 as aforesaid.

8. The 2011 Regulations were introduced to provide security for tenants in paying over deposits to landlords and to address an issue with some landlords taking tenancy deposits and then failing to pay them back where they were lawfully due at the end of the tenancy. The 2011 Regulations also provide that parties have access to an independent and impartial dispute resolution mechanism within a scheme to address any deposit deductions which require to be considered.

9. By the Respondent's failure to lodge the deposit into an approved tenancy deposit scheme, the deposit was not protected for the duration of the tenancy. The Applicant was deprived of the security of having their deposit held in a tenancy deposit scheme, and further deprived of their ability to access a scheme dispute resolution process as regards challenging the Respondent's deduction from the deposit.

10. The Tribunal was not satisfied that there was any good reason for the deposit not having been properly lodged. The Tribunal noted from the text messages lodged by the Applicant that no explanation was offered by the Respondent in this regard, when this issue was raised with him directly. Information as to a landlord's legal duties and responsibilities is widely available. The Tribunal noted that the sum claimed by the Applicant was less than the maximum which could be awarded in such an application, and accordingly considered that granting same was reasonable in the circumstances.

- Decision

11. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant in the undernoted sum:

SEVEN HUNDRED POUNDS (£700) STERLING

### **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.**

# F Watson

**Legal Member/Chair**

**Date: 13 September 2022**