

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**Chamber Ref: FTS/HPC/PR/22/1756**

**Re: Property at 4B Breadalbane Terrace, Perth, Perthshire, PH2 8BY (“the Property”)**

**Parties:**

**Mrs Isida Beqo, 4 Glenlyon Road, Perth, Perthshire, PH2 0AG (“the Applicant”)**

**Elizabeth Smith, 16 Craiglea Road, Perth, PH1 1LA (“the Respondent”)**

**Tribunal Members:**

**Karen Moore (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a Payment Order in the sum of TWENTY FIVE POUNDS STERLING (£25.00) be granted.**

**Background**

1. By application received between 8 and 14 June 2022 (“the Application”), the Applicant applied to the Tribunal for an Order in terms of Regulation 10 of the Regulations. The Application comprised a copy of a tenancy agreement between the Parties with an entry date of 20 March 2020 and copy correspondence from SafeDeposit Scotland showing that a deposit had been lodged on 29 May 2020. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 22 August 2022 at 10.00 by telephone conference.
2. Prior to the CMD both Parties submitted written representations to the Tribunal.

**Case Management Discussion**

3. The CMD took place on 22 August 2022 at 10.00 by telephone. Both Parties took part.

4. The Applicant confirmed the detail of the Application and that she sought the maximum amount of award in terms of the Regulations. She stated that she had been asked to pay the deposit ahead of viewing the Property and so had made payment to the Respondent's letting agents on 19 March 2020. She stated that the deposit had not been lodged until 29 May 2020 outwith the 30 day time limit. She stated that the deposit had not yet been returned as it is under dispute.
5. The Respondent accepted that the deposit had been lodged late. She explained, as set out in her written representations, that she had relied on her letting agents, Belvoir Perth, to deal with matters on her behalf but they had not complied with the Regulations. She explained that she had terminated her agency with her letting agents in March 2021 at which time she re-lodged the deposit and sent the Applicant and the Applicant's co-tenant details of this and of where the deposit was lodged as required by the Regulations. The Respondent stated that she understood from correspondence with SafeDeposit Scotland that the letting agents had claimed to have received the deposit on 21 May 2020, and not on 19 March 2020.

### **Findings in Fact**

6. From the Application, the written representations and the CMD, the Tribunal made the following findings in fact: -
  - i) There had been a tenancy of the Property between the Parties which began on 20 March 2020;
  - ii) A tenancy deposit of £675.00 was paid on or around 19 March 2020;
  - iii) The tenancy deposit was paid to the Respondent's letting agents, Belvoir Perth;
  - iv) The tenancy agreement between the Parties advised that the deposit would be lodged with SafeDeposit Scotland, being an approved scheme;
  - v) The tenancy deposit ought to have been lodged with an approved scheme no later than 1 May 2020;
  - vi) The tenancy deposit was lodged with SafeDeposit Scotland on 29 May 2020;
  - vii) The Respondent provided the Applicant with the information required by the Regulation 42 of the Regulations.

### **Decision and Reasons for Decision**

7. The Tribunal had regard to the following Regulations: -

Regulation 3 which states:- *“(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.”*;

Regulation 42 which states *“(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; and*

Regulation 10 which states *“If satisfied that the landlord did not comply with any duty in regulation 3 the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit”*

8. From the Findings in Facts, the Tribunal determined that the Respondent had breached Regulation 3 by failing to ensure that the deposit was lodged with an approved scheme within 30 working days of the beginning of the tenancy. Therefore, the Tribunal was bound to make an Order in terms of Regulation 10 and had no discretion in that regard.
  
9. The Tribunal noted that the Respondent’s position that she had relied on her letting agents to comply with the Regulations and that she had since terminated her contract with those letting agents. The Tribunal noted that the deposit, although lodged outwith the 30 working day time limit, had been lodged within a relatively short time thereafter and so was not at risk for a protracted period. The Tribunal also noted that the Applicant had been advised with which approved scheme tenancy the deposit was lodged. The Tribunal had regard to the Applicant’s strong request that she be awarded the full amount allowed by the Regulations, however, in all the circumstances where the Respondent had relied on her letting agents in good faith, as she was entitled to do, where the Respondent had terminated her contract with those letting agents and where the deposit had not been at risk for a protracted period, the Tribunal took the view that it was not reasonable or proportionate to make an award for the full amount. The Tribunal also had regard to the fact that the Respondent had complied with Regulation 42. The Tribunal took the view that the Respondent’s failure to comply with the Regulations was at the lowest end of a breach of the Regulations. Accordingly, the Tribunal awarded the Applicant the sum of £25.00 to compensate her for her inconvenience.
  
10. Having made that decision, the Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal “may do anything at a case management discussion .....including making a decision” and so proceeded to make an order for payment in the sum of £25.00.

## **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.

Legal Member:

*Kate Moore*

Date: 22/08/2022