



**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/22/2359**

**Re: Property at 5/30 Simpson Loan, Edinburgh, EH3 9GX (“the Property”)**

**Parties:**

**Mr Oliver Gray, 13 Dalhousie Crescent, Eskbank, Edinburgh, EH22 3DP (“the Applicant”)**

**Mr Mubarak Al-Khulaifi, Pacific Property Limited, PO Box 12163 3rd Floor Office No 9, Bldg 61 Zone 13 St 150, Al Rayyan Complex Al Rayyan Road, Doha, State of Qatar, Qatar (“the Respondent”)**

**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 £500.00.**

1. By application dated 15 July 2022 the Applicant’s representative Miss Charlotte Gray applied to the Tribunal for an order under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). She submitted a copy of a Certificate from Safe Deposits Scotland, a lease of the property and an email from Safe Deposits Scotland in support of the application.
2. Following further correspondence between Miss Gray and the Tribunal administration, by Notice of Acceptance dated 27 July 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

## **The Case Management Discussion**

3. A CMD was held by teleconference on 5 October 2022. The Applicant did not attend but was represented by Miss Gray. The Respondent did not attend but was represented by Mr William Riddell of Umega Lettings, Edinburgh.
4. By way of a preliminary matter the Tribunal established that as the Tenancy agreement named Mr Mubarak Al-Khulaifi as the landlord and as he was also named as the owner of the property according to the title deed held by the Tribunal that he should be named as the Respondent. Miss Gray confirmed that she had named Mr Mubarak as the Respondent in the application. Mr Riddell explained that Pacific Property Limited was the property company owner by Mr Mubarak. He thought that title to the property may have been recently transferred into the company name but agreed that at the time in question Mr Mubarak would have been the Applicant's landlord. The Tribunal amended the Respondent's designation to be Mr Mubarak Al-Khulaifi.
5. The Tribunal established with the parties' representatives that the parties entered into a Private Residential tenancy that commenced on 26 March 2021 and ended on 20 May 2022. It was agreed that the Applicant's deposit of £5600.00 was not lodged with Safe Deposits Scotland until 20 May 2021. After some discussion it was agreed that the deposit had been lodged some 11 working days late.
6. Mr Riddell explained that blame for the late lodging of the deposit lay with his company as letting agents for the Respondent and not with the Respondent himself. He said that responsibility for submitting tenants' deposits lay with his company's accounts team. On this occasion the Applicant's deposit and one or two others had fallen through the net and had not been lodged within the time allowed. He said that at that time they had not had a sufficiently robust procedure in place to ensure that all deposits were immediately transferred into a scheme. He went on to say that the discrepancies had come to light during an audit when it had been discovered that the deposits were sitting in the client account. He said that they had immediately been transferred to Safe Deposits Scotland and that new robust procedures were in place to ensure that the problems could not recur.
7. In response to a query from the Tribunal Mr Riddell confirmed that there had been one previous case that had been decided by the First-tier Tribunal where a tenant's deposit had remained unsecured for the duration of the tenancy. He could not recall the names of the parties.
8. Mr Riddell confirmed that any award made by the Tribunal would fall to be met by his company as it had been the company and not the landlord who had been at fault.
9. For the Applicant Miss Gray submitted it was clear that the Respondent was in breach of Regulation 3 as the deposit had been lodged 11 days late and

therefore the Tribunal should award the maximum amount of three times the deposit namely £16800.00.

10. For the Respondent, Mr Riddell accepted that there had been a breach but that the deposit had been lodged only 11 days late out of a tenancy that had lasted over 14 months. He submitted that a more significant financial penalty might be appropriate if the Applicant's deposit had been unsecured for six months but for eleven days a more modest penalty would be appropriate.

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

11. The parties entered into a Private Residential tenancy that commenced on 26 March 2021 and ended on 9 June 2022.
12. The Applicant paid a deposit of £5600.00 at the commencement of the tenancy.
13. The Applicant's Letting Agents Umega Lettings, Edinburgh failed to secure the Applicants deposit with Safe Deposits Scotland until 20 May 2021.
14. The Deposit was 11 days late in being secured by Safe Deposits Scotland.
15. The Respondents Letting Agents failed to have sufficiently robust procedures in place to ensure that all tenants' deposits were lodged in an approved tenancy deposit scheme within 30 working days.
16. The Respondent is in breach of Regulation 9 of the 2011 Regulations.
17. The application is timeous.

### **Reasons for Decision**

18. There was agreement that the parties entered into a Private Residential Tenancy that commenced on 26 March 2021 and ended on 9 June 2022. It was also agreed that the Applicant paid a deposit of £5600.00 at the commencement of the tenancy and that this was not secured with Safe Deposits Scotland until 20 May 2021 some 11 days late.
19. The Tribunal was satisfied that the Respondent was in breach of Regulation 3 of the 2011 Regulations and given that the Application had been submitted to the Tribunal on 15 July 2022 the Tribunal was also satisfied that the application was timeous.
20. Having established that the Respondent was in breach of Regulation 3 and that the application was timeous the Tribunal must in terms of Regulation 10 of the 2011 Regulations impose a financial penalty on the Respondent.

21. In terms of Regulation 10 the Tribunal is obliged to make an order up to 3 times the deposit to be paid to the Applicant. When considering the Order and level of sanction the Tribunal must have regard to the severity of the breach and any mitigating factors. The deposit was unsecured for a period of just 11 days over the 30 working days permitted by the regulations. In the case of *Jenson v Fappiano* 2015 G.W.D 4-89 in relation to the amount of such an Award under regulation 10 of the Regulations it was noted that a judicial analysis of the nature of the non-compliance was required and a value attached to reflect a sanction which was fair and proportionate and just given the circumstances. It was further noted that the Sheriff said in said case that the value was not the starting point of three times the deposit minus the mitigating factors it was what was fair and proportionate in the exercise of balanced judicial discretion. The Court of Session in *Tenzin v Russell* 2015 Hous. L.R 11 held that any payment in terms of Regulation 10 of the Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.
22. In the present application the Tribunal has taken account of the fact that the blame for the failure to lodge the deposit in an approved scheme lies with the Respondent's letting agents rather than with the Respondent himself and that any financial payment will ultimately be met by them. The Respondent or his company apparently owns a number of properties and his letting agents manage these for him. It is obviously important that tenant's deposits are properly secured within the timescale provided in the regulations and any failure to do so will attract a financial penalty. However as is clear from the above case law it is important that the most severe sanctions should be reserved for the worst cases of wilful or flagrant disobedience where a tenant's deposit has been at risk for a prolonged period. The Tribunal has an unfettered discretion to make an award as long as it is fair, just and proportionate. In the present case the Applicant's deposit remained unsecured for a very short period and as soon as the letting agents' error was discovered they took immediate steps to remedy the situation and also took steps to make their procedures more robust so as to prevent further occurrences. The Tribunal could award as little as £1.00 or as much as £16800.00. The Tribunal in reaching its decision considers that in this case it would be totally inappropriate to make an award at the higher end of the scale given the short period of time the Applicant's funds were unprotected. Although the Tribunal has little or no information about the Respondent's own circumstances that may not be particularly relevant as it is known that it will be the Respondent's letting agents who will meet any financial penalty given they were responsible for the failure to lodge the deposit timeously. The Tribunal is satisfied that any sanction awarded should be at the lower end of the scale and after taking account of the substantial level of the deposit determines that a fair just and proportionate award to be paid to the Applicant is £500.00.

### **Decision**

23. Taking all the circumstances into account and being satisfied that it had sufficient information before it to make a decision without the need for a hearing the Tribunal finds the Applicant entitled to an order for payment by the Respondent to the Applicant in the sum of £500.00.

## **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.**

# G Harding

**Graham Harding**  
**Legal Member/Chair**

**5 October 2022**  
**Date**