

**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/22/2616

Re: Property at 72 Belvidere Avenue, Glasgow, G31 4PA (“the Property”)

Parties:

Ms Faith Parker, 45 Pitreavie Place, Glasgow, G33 5QW (“the Applicant”)

**Mr Joseph Keenan, Flat 1/1 27 Graham Square, Glasgow, G31 1AD (“the
Respondent”)**

Tribunal Members:

Richard Mill (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order be granted against the Respondent for
payment to the Applicant of the Sum of One Thousand Three Hundred and
Ninety Pounds (£1,390)**

Introduction

This is an application under Rule 103 and Regulation 9 of the Tenancy Deposit
Schemes (Scotland) Regulations 2011.

Service of the application and intimation of the Case Management Discussion (CMD)
was effected upon the respondent by Sheriff Officers on 31 August 2022.

The CMD took place by teleconference on 13 October 2022 at 2.00 pm.

The applicant joined the hearing personally was represented by Miss Laura Simpson
of Govan Law Centre. The respondent joined the hearing and represented his own
interests.

Findings and Reasons

The property is 72 Belvidere Avenue, Glasgow G31 4PA.

The applicant is Ms Faith Parker, the former tenant. The respondent is Mr Joseph Keenan, the former landlord.

A tenancy agreement was entered into between the parties in respect of the property which commenced in August 2018. No written lease has been produced but the applicant has lodged numerous exchanges of messages between the parties from which it is clearly evidenced that such a lease arrangement was in place.

The agreed monthly rent for the property was £695. Additionally, a £695 deposit was paid by the applicant to the respondent.

After service of a Notice to Leave, the applicant vacated the property on 29 April 2022. Her deposit of £695 was returned to her in full but it came to her attention that it had not been protected during the tenancy.

The applicant must satisfy the Tribunal by the production of sufficient documentary evidence that the deposit was not held by any one of the three Tenancy Deposit Schemes operating in Scotland which are SafeDeposits Scotland, Mydeposits Scotland or Letting Protection Service Scotland. The applicant relies upon written documentation from the three tenancy deposit schemes operating in Scotland confirming that the deposit was not lodged or held by them. The tribunal found the documentary evidence credible and reliable and attached weight to it.

The respondent lodged a handwritten letter with the tribunal, dated 11 September 2022, admitting that he did not lodge the deposit in accordance with the regulations. He referred to personal family problems which impacted upon his failings. He confirmed these circumstances orally at the hearing.

The Tribunal was satisfied that the respondent did not comply with the requirements of the 2011 Regulations and in particular did not lodge the deposit paid to an approved scheme. The duties of landlords are contained within Regulation 3. This requires the landlord who has received the tenancy deposit in connection with the relevant tenancy to pay the deposit to a relevant scheme administrator from an approved scheme within 30 working days of the beginning of the tenancy.

The Tribunal was satisfied that the respondent failed to comply with the duty in Regulation 3. Regulation 10 requires the Tribunal to make an Order against the respondent to pay to the applicant an amount not exceeding three times the amount of the tenancy deposit.

The Tribunal considered all relevant circumstances prior to making any Order under Regulation 10. The respondent was given the fullest of opportunities to make submissions in mitigation.

The Tribunal is satisfied having regard to the entirety of the documentary and oral evidence that the respondent did fail to act diligently and professionally and failed to account to the applicant in the required manner in respect of her deposit. The deposit was unprotected for the whole duration of the tenancy, which subsisted for well over three years. There are mitigating circumstances given that the deposit paid by the applicant was returned to her in full immediately on the day she moved out. The respondent's personal family difficulties do not excuse his failure.

In all the circumstances, the Tribunal ordered that the respondent pay to the applicant the sum of two times the amount of her tenancy deposit ie a total of £1,390. This is fair and proportionate in all of the circumstances. The public require to have confidence that residential landlords are operating fairly and that their deposits are secured in accordance with the law in force in Scotland.

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.

Richard Mill

13 October 2022

Legal Member/Chair

Date