



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

**Chamber Ref: FTS/HPC/PR/22/3296**

**Re: Property at 10 Anderson Court, Wishaw, ML2 7PD (“the Property”)**

**Parties:**

**Dr Jumana Abu Hamour, residing at Taigh Farrais, McDonald Drive, Forres IV36 1NG (“the Applicant”)**

**Mr Chris McCallum, residing at 17 Kirk Road, Wishaw, Scotland, ML2 7BL (“the Respondent”)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has breached his obligations under regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.**

**Background**

1. On 1 October 2021 the respondent let to the applicant the property at 10 Anderson Court, Wishaw, ML2 7PD. A Tenancy agreement was entered into which required payment of a deposit of £787.50. The tenancy ended on 31 July 2022.

**The Case Management Discussion**

2. A Case Management Discussion took place before the Tribunal by telephone conference at 11.30am on 12 December 2022. Both parties were present. Neither party was represented.

3. The respondent fully accepts that a deposit was paid at the commencement of the tenancy, and that deposit was not placed with an approved tenancy deposit scheme. The respondent used an agent (YourMove) throughout and had no direct financial dealings with the applicant. The respondent’s agents accept responsibility, but the respondent understands the principal of agency and knows that a payment order must now be made against him.

4. The applicant says that she had to repeatedly press the landlord's agents for return of the deposit. Although the deposit was refunded in full, the delay in repayment affected her plans. Throughout the duration of the lease, her deposit was not protected.

5. Both parties agree that the deposit was not lodged with an approved tenancy deposit scheme within 30 days of commencement of the tenancy. Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 tells me that, in light of that admitted fact, I must make a payment order against the respondent. I can dispose of this case today, without the need for a further hearing.

### Findings in Fact

6. In October 2021 the respondent agreed to let the dwelling-house at 10 Anderson Court, Wishaw, ML2 7PD, to the applicant. A tenancy agreement was entered into setting out the agreed rental and requiring a deposit of £787.50. The tenancy agreement narrated that the deposit would be paid into an approved tenancy deposit scheme within 30 days of commencement of the lease.

7. Prior to the applicant's application to the tribunal there had been no direct dealings between the applicant and the respondent. The respondent entrusted all matters to his agents, Your Move. It was the respondent's agents who received the deposit. It was the respondent's agents who held the deposit. It was the respondent's agents who failed to pay the deposit into an approved tenancy deposit scheme.

8. After the tenancy ended, the respondent's agents refunded the deposit to the applicant but only after several requests from the applicant.

9. The respondent first learnt of his agents' error when this application was served on him. The respondent had no intention of depriving the applicant of repayment and used the hearing to apologise to the applicant.

### Reasons for Decision

10. It is beyond dispute that a deposit of £787.50 was paid at the commencement of the tenancy. It is an admitted fact that the deposit was not paid into an approved scheme and was held by the respondent's agents throughout the tenancy.

11. The respondent accepts responsibility for his agents' error. The respondent has no history of breaches of the 2011 Regulations. A full accounting for the deposit has been made. Against those mitigating factors I must balance the undisputed fact that the deposit was unprotected for many months.

12. The Applicant asked me to make a payment order. The purpose of the order is not to enrich the applicant. The purpose of the order is to punish the respondent; to mark society's displeasure; to protect society and to ensure the enforcement of the 2011 Regulations in the future. Although the respondent's agents refunded the applicant they only did so after the deposit had rested in their name alone for many months.

13. The amount of deposit was £787.50. For many months the deposit was not protected. A payment order equivalent to the value of the deposit reflects the seriousness of the breach of the 2011 Regulations.

14. The applicant accepts that the respondent has been let down by his agents. The respondent's agents are aware that the respondent enjoys a right of relief against them.

15. The appropriate level of payment order is £787.50

### Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant of Seven Hundred and Eighty-Seven Pounds and fifty pence (£787.50) within 14 days of service of this order.

### **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.**

Paul Doyle

**Legal Member**

**12 December 2022**