



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Regulations 3 and 10 of the Tenancy  
Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/22/4511**

**Re: Property at Flat 4 31 Cakemuir Gardens, Niddrie, Edinburgh, EH16 4FL (“the  
Property”)**

**Parties:**

**Mrs Anjana Somasekharan Nair, Mr Gopakumar Indukumar, 185/3 Commercial  
Street, Leith, Edinburgh, EH6 6JF (“the Applicant”)**

**Ms Metro Realtors UK Ltd, 4 Redheughs Rigg, South Gyle, Edinburgh, EH12  
9DQ (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that an order for payment in the amount of £2250 should  
be made.**

1. The Applicants lodged an application on 5<sup>th</sup> January 2023 under Rule 103 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) seeking a sum under the Tenancy Deposit (Scotland) Regulations 2011.
2. Lodged with the application were:
  - a. Tenancy Agreement showing a commencement date of 3<sup>rd</sup> July 2022, with a rent of £1450 per month and a deposit of £1500
  - b. Copy bank statements
  - c. Emails from the three tenancy deposit schemes confirming that the deposit had not been lodged
  - d. Emails between the parties

- e. Email from the Applicants to the Respondent confirming the tenancy came to an end on 30<sup>th</sup> November 2022
3. The papers were served on the Respondents on 9<sup>th</sup> February 2023.
4. The Respondent's solicitor lodged Written Submissions on 1<sup>st</sup> March 2023. He raised a preliminary issue that the application was incompetent as the Applicants had not specified that they sought a sum in payment, nor had they stated the amount they sought. He contended that neither the Respondent nor the Tribunal is aware of the remedy the Applicants seek.
5. The Submissions confirmed that the Respondent admitted the breach. They said that the Respondent had carried out an inspection of the property at the end of the tenancy and found damage. They had therefore retained the sum of £490. The Submissions went on to say that the tenancy was intended to be on a short term basis and that the First Named Applicant was pregnant and had nowhere else to go. The tenancy was offered on humanitarian grounds. Further, the Submissions said that prior to moving in to the property the parties had agreed that the Applicants would move out as soon as they could find suitable long term accommodation. Given the intended short term nature of the tenancy the Respondent did not lodge the deposit in a scheme, and accepted that this was a mistake. The Submissions said that the Respondent assisted the Applicants with settling in to a new country and provided them with accommodation when no one else would.

### **Case Management Discussion**

6. The CMD took place by teleconference. The Applicants did not dial in. The Respondent was represented by Mr Robertson of Gillespie McAndrew, Solicitors.
7. The Clerk advised that there had been emails in February between the Applicants and the Tribunal administration saying that the Applicants would be in India on the date of the CMD but that they should be able to join by mobile phone. They did say that they were back in the UK from 1<sup>st</sup> April.
8. In the circumstances the Tribunal decided to adjourn the CMD to a different date.
9. The Case Management Discussion was adjourned to 18<sup>th</sup> May 2023 at 10am by teleconference.

### **Continued Case Management Discussion**

10. The CMD took place by teleconference. The Applicants dialled in and represented themselves. The Respondent did not dial in and was not represented.

11. The Chairperson noted that the firm of solicitors who represented the Respondent at the first CMD had sent an email to the Tribunal on 19<sup>th</sup> April 2023 confirming that they were no longer acting for the Respondent. She also noted that intimation of today's CMD was made by email on the Respondent direct. Written submissions had been lodged on behalf of the Respondent prior to the previous CMD. The Chairperson was therefore satisfied that the Respondent had notice of the date and time of the CMD, and that she had sufficient information to allow her to make a decision.
12. The Second Named Applicant spoke on behalf of both Applicants. He said that they had taken entry to the property on 3<sup>rd</sup> July 2022. The rent was £1450 per month, and they paid a deposit of £1500. They moved out at the end of November 2022. The Respondent returned £1010 of the deposit to them, retaining £490 towards damage. When asked for evidence of the damage they did not produce anything. The Applicants contacted the three tenancy deposit schemes. There was no evidence that the deposit had been placed in any of them.
13. As far as the Respondent's submissions were concerned the Applicants disagreed with what had been said, but also submitted that they were irrelevant, as the duty was on the Respondent to place the deposit in a Scheme in terms of the Regulations.

## **Findings In Fact**

1. The parties entered in to a private residential tenancy agreement for the property commencing 3<sup>rd</sup> July 2022;
2. The rent was £1450 per month;
3. The Applicant paid a deposit of £1500 to the Respondent;
4. The Applicants vacated the property on 30<sup>th</sup> November 2022;
5. The Respondent re-paid the sum of £1010 to the Applicants;
6. The Respondent retained the sum of £490 towards damage they claimed had been done;
7. The Respondent did not place the deposit in a tenancy deposit scheme.

## Reasons For Decision

15. The Tenancy Deposit Scheme (Scotland) Regulations 2011 apply.

Regulation 3 states:

*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.*

16. The Respondent should have complied with the Regulation and place the deposit in an approved scheme.

17. Regulation 10 states that

*10. If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal—*

*(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 First-tier Tribunal 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.*

18. The Tribunal has discretion in deciding what the Respondent should be ordered to pay. Serial offenders, i.e. landlords with multiple properties who do not place deposits in schemes are at the upper end of the scale. The current case is not at the upper end of the scale. However, there is still a breach of the Regulations. Renting out a property is a commercial decision and there are laws and regulations in place to protect parties who enter in to tenancy agreements. These must be complied with.
19. The written submissions stated the Respondent's position. It was clear that the Respondent thought it was doing the Applicant some kind of favour, shown by the use of the words "humanitarian grounds" rather than entering in to a commercial arrangement where it benefitted by entering in to a tenancy agreement, receiving rent and taking a deposit. In addition, the Respondent deducted money from the deposit for damage, which the Respondent failed to evidence. The reasons for the Regulations are to protect the tenant's deposit, as the money belongs to the tenant, and also to provide a fair and impartial mechanism for adjudicating on whether a deposit should be returned to a tenant or some or all be retained by the landlord. The Respondent had no right to retain anything from the deposit.
20. The Tribunal has power to award a sum equivalent to up to three times the amount of the deposit.
21. In all the circumstances, and taking in to account the fact that the Respondent made a deduction from the deposit without any basis for doing so, the Tribunal has decided to order the Respondent to pay to the Applicant the sum of £2250.

## **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/Chair**

3<sup>RD</sup> July 2023

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**Date**