



**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/23/0123**

**Re: Property at 9/5 Yardheads, Edinburgh, EH6 6BU (“the Property”)**

**Parties:**

**Ms Adejolu Adebimpe Olufunmilayo, 266 Spring Road, Sholing,  
Southampton, SD19 2NT (“the Applicant”)**

**Mr Taslim Asghar, 8 Burdiehouse Road, Edinburgh, EH17 8AF (“the  
Respondent”)**

**Tribunal Members:**

**Yvonne McKenna (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 be made in the sum of £ 1990  
in favour of the Applicant due by the Respondent**

**Background**

1. This application for sanction on a landlord in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 was first lodged with the Tribunal on 21 December 2022 and accepted by the Tribunal on 17 January 2023.
2. A Case Management Discussion was set for 15 March 2023 at 11.30 to take place by teleconference.
3. The relevant paperwork was served on the Respondent by Sheriff Officers on 10 February 2023.
4. The CMD for this application was conjoined with the CMD in respect of an application to the Tribunal in terms of Tribunal Reference

FTS/HPC/CV/23/0267, which relates to a claim for the return of the Applicant's deposit in the sum of £995.

### **The Case Management Discussion (CMD) 15 March 2023**

5. The CMD took place at 11.30 on 15 March 2023.
6. The Applicant did not join the hearing and was not represented.
7. On Friday 10 March 2023 the Applicant had e-mailed the Tribunal enquiring about further procedure and stating that the Respondent had not lodged any written representations as requested by the Tribunal.
8. It was unclear to the Legal Member what the Tribunal had said in response to that e-mail, and whether the Applicant had been advised that notwithstanding the fact that no representations had been received, that the CMD would still proceed.
9. The Respondent attended the CMD.
10. The Respondent explained that he had lodged with the Tribunal written representations along with video evidence. He said that these had been submitted by him on 21 February 2023. The legal member checked with the Respondent that he had the correct e-mail address and he confirmed this with her.
11. Unfortunately the Clerk did not have these documents showing as having been received, and the Legal Member explained that she did not have them, and further that they had also not been intimated to the Applicant.
12. The Respondent said that he had followed these representations up with an e-mail the following day on 22 February 2023 asking for confirmation of receipt at 3.40, and he had heard nothing further from the Tribunal.
13. The Respondent stated that he had incurred £4397 of costs in respect of damage occasioned by the Respondent at the Property. He stated that he had required to purchase new carpets, beds, a settee, "and everything", as the Applicant's children had urinated throughout.
14. The Legal Member told the Respondent that further enquiry would be made with the Caseworker. Unfortunately on the day of the CMD this was a day of industrial action and no further enquiry could be made. The Respondent was also advised that upon receipt of the documentation that the Tribunal would be in touch regarding the video evidence as there is a separate procedure for video evidence to be introduced by a party to proceedings before the Tribunal. For security reasons the Tribunal are unable to open any video files attached to e-mails initially. There is a separate process by which video/audio evidence can be uploaded to a secure workspace on the authority of the Tribunal. In the first instance a written description of what is on the video/audio evidence is required.

15. The Respondent stated that he was content for the Tribunal to correspond with him by e-mail and provided his updated e-mail address.
16. In the circumstances the CMD was adjourned to a new date to be afterward fixed.
17. Following the CMD the Tribunal issued Directions to parties in the following terms;-

### **‘NOTICE TO THE PARTIES**

*The tribunal, on its own initiative and for the purpose of making inquiries, give the following Direction to the Applicant/Respondent as to the conduct and progress of this Application in terms of Section 16 of Schedule 1 to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017:*

#### ***The Applicant is required to provide:***

1. *A full copy of the tenancy agreement as the copy provided to the Tribunal appears to run from clause 30 on to clause 42 so there is/are clearly page(s) missing.*
2. *Written confirmation regarding the deposit. It is noted that the tenancy agreement does not provide for a deposit. Can the Applicant please clarify the circumstances in respect of which the deposit was paid by her?*

#### ***The Respondent is required to provide;***

1. *A further copy of the written representations in respect of this action to the Tribunal.*
2. *An application to the Tribunal for the consideration of video evidence he wishes to be considered by the Tribunal. For security reasons the Tribunal is unable to open any video files attached to e-mails. An application requires to be submitted by the Respondent to the Tribunal with a detailed written description of what is on the video evidence together with any inclusions of any third parties, and whether it conforms to GDPR.*

*The said documentation should be lodged with the Chamber no later than close of business on 29 March 2023’.*

### **The Case Management Discussion 30 June 2023**

18. A further CMD was fixed for 30 June 2023 at 10am.

19. The CMD took place by teleconference on 30 June 2023 at 10am.
20. The CMD was intimated to both parties by e-mail on 30 May 2023. The e-mail communication forwarded set out that the Respondent would require to take part in the CMD and stated ;

*The tribunal will hold a case management discussion with both parties by conference call on 30 June 2023 at 10:00, which you are required to take part in. The tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision on the application which may involve making or refusing a payment order. If you do not take part in the case management discussion, this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair*

21. The Applicant was present on the call supported by her husband Mr Adekunle Adejolu and represented by Ms Sheila Gilmore of the Citizens Advice Bureau, Edinburgh.
22. The Respondent was not present and was not represented.
23. The Tribunal had before it the following documentation at the CMD on 30 June 2023;-

#### Documents lodged by the Applicant

- Tenancy Agreement
- Confirmation letters from the 3 Deposit Scheme providers to the Applicant stating that the Applicant's deposit for the Property was not lodged with any of them
- Proof of payment of Deposit
- Various 'Whatsapp' messages exchanged between the parties dated 8/10/2022 to 2/11/2022.
- Verification of bank transfers of payments made by the Applicant to the Respondent
- Medical certificate in respect of the Applicant dated 25 November 2022
- Letter from the Applicant in response to Directions forwarded to the Tribunal by her Representative on 27 March 2023

#### Documents lodged by the Respondent

- Various pictures of carpets and mattresses
- An invoice from "Carpet and Flooring dated 7 December 2022 for £186.97
- Screenshots of payments made to;-  
City Plumbing Supplies for £4.69 dated 3 December 2022;  
B and M for £157.90 dated 5 December 2022;  
The Paint Shed Limited £100 dated 6 December 2022  
Samuel Burns and Co £530 dated 13 December 2022

- Purchase confirmation of a Henry Hoover dated 14 January 2023
- Timpson's receipt for £39 dated 13 January 2023
- Asda receipt £218.90 dated 16 December 2022
- Invoice "Tony Handman Services" for £2640 dated 26 January 2022

24. In between the two CMDs the Respondent had lodged the above documents but no written submissions dealing with the claim before the Tribunal had been received from the Respondent. He had not made any separate claim to the Tribunal in his own right against the Applicant in respect of the sum he stated was due to him.

25. Ms Gilmore invited the Tribunal to grant the application for a Payment Order. She stated that the Applicant had no contact with the Respondent since she left Edinburgh in December 2022. She maintained that the Respondent had failed to lodge the deposit for the Property as he should have done with a Government approved scheme. She submitted that the Respondent is not a "one-off" landlord and has a property company and lets out several properties. He is in clear breach of the Tenancy Deposit Scheme Regulations. She furthermore stated that the Respondent had raised matters at the first CMD which had not been substantiated and it had not been established that the Property required repairs and/or redecoration at the conclusion of the Applicant's tenancy.

26. She said that the Respondent's credibility was another issue. The Respondent had set out in messages to the Applicant that he wanted to sell the Property and was adamant that the Applicant and her family leave as a new owner was moving in. He had been unwilling to change the date that the Applicant required to leave the Property. Then he seemed to be arguing he needed to repaint and refurbish for another tenant moving in.

27. Ms Gilmore left the quantum of the award in the hands of the Tribunal and made no representations in that respect.

### **Findings in Fact**

28. The parties entered into a tenancy agreement with a commencement date of 5 November 2021.

29. The monthly rent was £995 and was due one month in advance of the 5<sup>th</sup> day of every calendar month.

30. A deposit of £995 was paid to the Respondent at the commencement of the tenancy together with the first month's rent of £995.

31. The deposit and first month's rent totalled £1990 and was paid by bank transfer on 6 November 2021 to the Respondent.

32. The tenancy agreement terminated on 1 December 2022 when the Applicant left the Property.
33. In November 2022 the Respondent stated in a 'Whatsapp' message to the Applicant;
- 'Yes I will refund u the deposit once we check the property. Check out is 1 December and we will give u the rent back for 5 days back.'
34. The Respondent failed to return the deposit to the Applicant at the end of the tenancy period.
35. The Respondent had failed to lodge the deposit in a tenancy deposit scheme as required in terms of regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011/176.
36. The deposit has still not been returned to the Applicant.

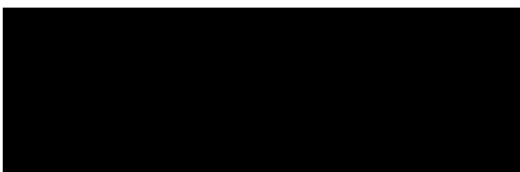
### **Reasons for the Decision**

37. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to enable it to determine the application without a Hearing.
38. Under Regulation 3(1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("The 2011 Regulations"), a landlord must, within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme. Under Regulation 10, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal must order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit. Regulation 42 of the 2011 Regulations requires a landlord to provide certain information to tenants, including the name and contact details of the scheme administrator of the tenancy deposit scheme to which the deposit has been paid.
39. Whilst the tenancy agreement did not provide for the payment of a deposit the Applicant had provided confirmation and evidence to the Tribunal by way of a bank transfer confirmation made on 6 November 2021 to the effect that a deposit was paid. The Respondent himself acknowledged in a 'Whatsapp' message that there was a deposit payment made. . It is clear to the Tribunal that a deposit was paid and that it was not protected for the duration of the tenancy which is a period of almost 13 months.

40. Turning to the gravity of the breach, the Tribunal reviewed the cases in connection with tenancy deposits. The tribunal was mindful of the decision of Sheriff Jamison in Kirk-v- Singh 2015 S.L.T.(Sh Ct) 111 and the need to impose a sanction that is fair proportionate and just.
41. The Tribunal considered the decision of the Upper Tribunal (UTS/AP/19/0020) which states: "Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals.
42. This was a serious breach but not at the very top end of the scale in view of the period of time that the deposit was unprotected. However the deposit has still not been repaid to the Applicant who has had to raise a separate action to the Tribunal in that regard.
43. There is no evidence before the Tribunal that the Respondent's actions are wilful although there was a suggestion that the Respondent rents out a number of other properties. In addition the Respondent has not turned up to defend this case. The maximum penalty is three times the deposit (£2985). The tribunal decided a penalty of £1990 (which is twice the deposit of £995) was fair proportionate and just given the length of time the deposit was unprotected and taking into account all the circumstances of the case.

### **.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**

**30 June 2023**

**Date**