

Housing and Property Chamber
First-tier Tribunal for Scotland



**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/22/1026

Re: Property at 76 Loch Awe, East Kilbride, G74 2EW (“the Property”)

Parties:

Mr Ian Sanderson, 50 Quebec Drive, East Kilbride, G75 8SA (“the Applicant”)

Mr Graeme Bell, Unknown, Unknown (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

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 in the sum of £675.00.

Background

1. By application dated 13 April 2022 the Applicant’s representative Hazel Sanderson, applied to the Tribunal for an order under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicant’s representative submitted a copy of the tenancy agreement and confirmation of the end date of the tenancy and proof of payment of the deposit in support of the application.
2. By Notice of Acceptance dated 19 April 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Sheriff Officers attempts to serve notice of the CMD on the Respondent on 14 and 20 May 2022 were unsuccessful and in light of their report service on the Respondent was carried out by way of advertisement on the Housing and Property Chamber website. On 17 June 2022 the Tribunal administration sent

an email to the Respondent using the email address provided by the Applicant's representative in her application advising the Respondent of the advertisement and of the date and time of the CMD.

The Case Management Discussion

4. A CMD was held by teleconference on 26 July 2022. The Applicant did not attend but was represented by Miss Hazel Sanderson. The Respondent did not attend nor was he represented. The Tribunal being satisfied that service by advertisement on the Housing and Property Chamber website had been carried out, conform to Certificate of Service dated 26 July 2022 determined to proceed in the absence of the Respondent.
5. The Tribunal noted from Miss Sanderson that her father had communicated with the Respondent using a number of different email addresses including the one provided by her in the application.
6. Miss Sanderson went on to explain that following payment of the deposit of £450.00 at the commencement of the tenancy on 29 May 2020 Mr Bell had confirmed that the deposit would be paid into a tenancy deposit scheme but had not said which one. She went on to say that over the following two months they had sent several emails asking when they would be told which scheme the deposit had been placed in but usually the emails were ignored. She said that eventually they stopped asking about it. Miss Sanderson said that she was in no doubt that Mr Bell knew that the deposit was supposed to be lodged in an approved scheme but had chosen not to put it into one. She said that her father had been left at his mercy.
7. The Tribunal asked if the Respondent had any other rental properties but Miss Sanderson was unable to say whether he had or not. She went on to say that following the tenancy ending on 27 March 2022 the Respondent repaid the deposit back into the Applicant's bank account on 21 April 2022.

Findings in Fact

8. The parties entered into a Private Residential tenancy that commenced on 29 May 2022 at a rent of £450.00 per calendar month.
9. The Applicant paid the Respondent a deposit of £450.00 at the commencement of the tenancy.
10. The Respondent failed to lodge the deposit in an approved Tenancy Deposit scheme throughout the duration of the tenancy.
11. The tenancy ended on 27 March 2022.
12. The Respondent repaid the deposit to the Applicant on 21 April 2022.

Reasons for Decision

13. The Tribunal was satisfied from the documents produced and the oral submissions that the parties entered into a Private Residential Tenancy agreement that commenced on 29 May 2020. The Tribunal was also satisfied that at the commencement of the tenancy the Applicant had paid a deposit of £450.00 to the Respondent. It further appeared that despite several email requests for information as to which of the tenancy deposit schemes the deposit had been placed in the Respondent did not reply. The tenancy agreement itself was silent in this regard. Following the end of the tenancy the deposit was returned to the Applicant by the Respondent. The Tribunal was therefore satisfied that the deposit had not been placed in an approved scheme for the whole duration of the tenancy, a period of just under two years. During that time the Applicant's funds had been unprotected.
14. The Tribunal had little information about the Respondent's circumstances it did not know if the Respondent was a professional landlord with a large portfolio of properties or only had one rental property therefore any sanction could only be based on the fact that the Respondent was clearly aware of the need to lodge the deposit in an approved scheme given the correspondence between the Applicant and the Respondent at the commencement of the tenancy and the fact that he apparently chose not to do so throughout the entire duration of the tenancy.
15. Regulation 3 of the 2011 Regulations requires a landlord to lodge a tenant's deposit in an approved scheme within 30 working days of receipt and to provide the tenant with details of the scheme. In the event of failure to comply with Regulation 3 a tenant can within three months of the end of the tenancy make an application to the Tribunal for an order. In this case the tenancy ended on 27 March 2022 and the application was made on 13 April 2022. The application is therefore timeous.
16. In terms of Regulation 10 of the 2011 Regulations, if the Tribunal finds that the Respondent is in breach of Regulation 3 it must impose a financial sanction upon the Respondent of up to three times the deposit. It is well established that in imposing any sanction the Tribunal should take account of all the circumstances before it and impose a sanction that is fair, just and proportionate. In the present case it appears that the Respondent was well aware of his obligation to lodge the Applicant's deposit in an approved scheme but chose not to do so over a period of almost two years during which the Applicant's funds were totally unprotected. It is the Tribunal's view that this places the failure on the part of the Respondent in the mid-range of such cases and accordingly considers that a sanction of one and a half times the deposit namely £675.00 is appropriate.

Decision

17. The Tribunal having carefully considered the written representations and oral submissions and being satisfied it can make a decision without the need for a

hearing finds the Applicant entitled to an order for payment by the Respondent in the sum of £675.00.

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.



**Graham Harding
Legal Member/Chair**

**26 July 2022
Date**