



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit  
Schemes (Scotland) Regulations 2011/176**

**Chamber Ref: FTS/HPC/PR/20/1069**

**Re: Property at 3/2 20 Rupert Street, Glasgow, G4 9AR (“the Property”)**

**Parties:**

**Cameron Hales, Mr Sean Buchanan, Mr Stephen Cochrane, B/1, 14 Fortrose Street, GLASGOW, G11 5NS; 63 Dryburgh Avenue, Rutherglen, Glasgow, G73 3EU; Flat 3/1 Mingarry Street, Glasgow, G20 8NT (“the Applicants”)**

**Mr Ajitpal Dhillon, Mr Amarjit Singh, 1105 Great Western Road, Glasgow, G12 0AA (“the Respondents”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member) and Angus Lamont (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for payment in the sum of THREE THOUSAND ONE HUNDRED AND FIFTY POUNDS (£3,150.00)**

**Background**

1. By application received on 22<sup>nd</sup> April 2020 the applicants sought an order for payment in terms of Rule 103. The applicants sought the maximum award of £3900 in terms of the regulations.
2. Case management discussions (“cmds”) took place on 17<sup>th</sup> August 2020 and 2<sup>nd</sup> October 2020. The respondents did not attend the latter cmd at which an order for payment was granted in the sum of £3,500.
3. The first respondent lodged an application for recall and an application for permission to appeal the decision. A hearing in respect of the application to recall took place on 5<sup>th</sup> January 2021. The first respondent had legal representation at the recall hearing.
4. At the recall hearing the Tribunal noted that there was a joint owner of the property who had not previously been a party to the application. The Tribunal determined to allow the application to recall the order in order that the joint

owner could be served with the application and have an opportunity to respond. Permission to appeal was thereafter withdrawn and the Tribunal subsequently fixed a hearing to determine the application.

## **The Hearing – teleconference – 12<sup>th</sup> April 2021**

### **Preliminary matters**

5. The second respondent was not in attendance at the hearing. The first respondent is the second respondent's son. He advised that his father was feeling unwell after his Covid-19 vaccination and was unfit to attend. He confirmed that his father was not seeking an adjournment and wished the hearing to proceed in his absence.
6. The Tribunal was satisfied that proper notice of the hearing had been given to the second respondent and determined to proceed with the hearing in his absence in terms of rule 29, taking into account the information provided by the first respondent.
7. The first respondent lodged a number of documents on the morning of the hearing, including a handwritten note of rental payments, a bank statement, a letter relating to works carried out at the property and a document which the first respondent stated was signed at the commencement of the lease. The Tribunal had previously issued a direction specifying that documents required to be lodged by 15<sup>th</sup> March 2021. The applicants objected to the documents being lodged at such a late stage. The first respondent advised that he had thought that some of the documents had been sent to the Tribunal at an earlier date but could not be sure. He advised that the documents were important in terms of his proposed defence. The Tribunal could see nothing in the documents which had not previously been raised by the first respondent. The Tribunal had regard to the overriding objective and determined to allow the documents to be received late.

### **Evidence**

#### Sean Buchanan

8. Mr Buchanan took the lead in representing the applicants position. He confirmed that he had moved into the property in October 2018 with Agne Gauchiute and Cameron Hales as joint tenants. A Private Residential Tenancy agreement had been lodged confirming the terms of the agreement. The monthly rent was £1300. A deposit of £1300 was paid.
9. Mr Buchanan confirmed that the deposit had been paid equally by the three joint tenants. Bank statements had been lodged showing the payment of the first months rent and a one third share of the deposit by each of the joint tenants.
10. Mr Buchanan confirmed that Ms Gauchiute moved out of the tenancy in May 2019. He had been in contact with Ms Gauchiute prior to submitting a bank statement for her account to the Tribunal on 18<sup>th</sup> September 2020. She had confirmed to him that she had not received any money back from the first respondent in respect of her deposit.
11. Mr Buchanan explained that when Mr Gauchiute moved out of the property Mr Cochrane moved in. Mr Cochrane had paid £325 to Ms Gauchiute prior to

moving in. This payment was evidenced in the bank statement lodged with the Tribunal. The payment had been made to repay the portion of the tenancy deposit that would have been due to Ms Gauchiute, in effect placing Mr Cochrane in her place.

12. After Ms Gauchiute left, Mr Buchanan stated that the first respondent was aware that Mr Cochrane had moved in. A meeting took place with the first respondent in the property which Mr Cochrane attended with the other applicants. The first respondent had issued a blank tenancy which he wished Mr Buchanan and the other applicants to complete. Mr Buchanan and the other applicants had been uncomfortable signing an incomplete tenancy agreement and had not done so.
13. Mr Dhillon had increased the rent to £1400 per month some time after Ms Gauchiute left. Rental payments had always been up to date.
14. Mr Buchanan advised that the property had four bedrooms. Another tenant, Adam Parsons had lived in the property for a time however, he could not recall the precise period. He advised that Tribunal that he was still in contact with Mr Parsons who had been made aware of the present application. Mr Parsons had stated that he did not wish to be involved in the proceedings and had recently confirmed his position in a message to Mr Buchanan.
15. Mr Buchanan explained that the applicants had given notice that they wished to leave the tenancy in February 2020 before moving out in March 2020. They had requested the return of their deposit. Mr Dhillon had refused to return the deposit. Mr Buchanan had subsequently discovered that the tenancy deposit had not been lodged in a tenancy deposit scheme as was required.
16. Mr Buchanan disputed Mr Dhillon's submission that the property had been left in a poor state of repair. He advised that the property had been left in a better condition than when the applicants had moved in.
17. Mr Buchanan advised that he worked in hospitality. He had moved in with his grandmother during the coronavirus lockdown. However, had he been seeking another private let the lack of the deposit funds would have impacted on his ability to afford another tenancy.
18. Mr Buchanan had found the process of seeking to recover the tenancy deposit to be stressful. He explained that it had impacted on his mental wellbeing. He advised that he had to take time off work to attend hearings, which meant a loss of earnings.

#### Cameron Hales

19. Mr Hales confirmed that he agreed with Mr Buchanan's evidence. He explained that Adam Parsons had moved into the tenancy in April 2019 and stayed in the property until March 2020 when the applicant's had moved out. He confirmed that Mr Parsons was in contact with the applicants through a group chat on social media and had been aware of the application. He had indicated that he had no interest in pursuing the application himself.
20. Mr Hales gave evidence that the property had been in a better condition when he left than when he had moved in. Mr Hales advised the property had been in a poor state of cleanliness when the applicants had moved in and they had made it more habitable.

21. Mr Hales advised that he had been impacted financially by the failure of the first respondent to return the tenancy deposit. He had found the present process to be stressful and it had an impact on his mental wellbeing.

Stephen Cochrane

22. Mr Cochrane confirmed that he agreed with the evidence given by Mr Buchanan. Mr Cochrane explained that he had moved into the property in June 2019 after MS Gauchiute moved out. He had paid £325 directly to Ms Gauchiute in respect of her share of the deposit prior to moving in.
23. Mr Cochrane gave evidence that he had met with the first respondent at the flat with Mr Buchanan and Mr Hales. In his view the first respondent would have known that he was a tenant of the property. He confirmed that Adam Parsons had resided in the property from April 2019 and that he had indicated that he did not wish to participate in the present application via a group chat on social media.
24. Mr Cochrane advised that the property had been well maintained by the applicants.
25. Mr Cochrane advised that whilst he had not experienced financial hardship, he had found the drawn-out process of recovering the deposit to be a source of stress.

Ajitpal Dhillon

26. Mr Dhillon explained that he had dealt with the management of the property. The second respondent had dealt with collection of the rent.
27. Mr Dhillon accepted that he had received a deposit of £1300 from Mr Hales, Mr Buchanan and Ms Gauchiute when the lease was signed in October 2018. He advised that the preparation of the lease had been overseen by Regent Property Residential Agents. Mr Dhillon in part attributed the failure to lodge the deposit in a suitable scheme to the letting agent.
28. Mr Dhillon advised that when he became aware of the failure to lodge the deposit in a scheme it was too late and at that stage, he was trying to have a new lease signed for the property.
29. Mr Dhillon confirmed that he is a landlord of multiple properties however he declined to confirm how many. He explained that there had been problems with the tenancy deposits for a number of his properties. As a result, there had been a number of other applications to the Tribunal under the tenancy deposit regulations.
30. Mr Dhillon confirmed that when Ms Gauchiute moved out of the property in May 2019, he did not return her share of the deposit. He explained that she had not asked for her share to be returned.
31. Mr Dhillon was aware that new tenants had moved into the tenancy after Agne Gauchiute's departure. To formalise the situation, he sent a lease with various blanks to the property for the tenants to complete. He explained that the tenants refused to sign the lease.
32. Mr Dhillon gave evidence that his understanding was that the deposit from the original lease was carried over to the lease created after the departure of Agne Gauchiute.

33. Mr Dhillon stated that in his view the original tenants, Mr Hales and Mr Buchanan were subletting the rooms without his permission. He explained that when he visited the property there were usually a number of people there and he didn't know that Mr Cochrane was a tenant of the property.
34. Mr Dhillon stated that after the applicants left the property it was in a poor state of cleanliness and repair. He explained that he spent £3400 on redecoration. He was very critical of the behaviour of the applicants and their maintenance of the tenancy.
35. Mr Dhillon accepted that the deposit had not been dealt with as it should have been. He explained that landlords sometimes got things wrong, but that the tenants were at fault too. He explained that coronavirus had a negative affect on his business. He had been able to relet the property, but other properties he owned had been empty for longer.
36. Mr Dhillon advised that the tenancy deposit regulations were unfair and should be changed. He had experienced financial loss as a result of applications brought to the Tribunal under the regulations.
37. Mr Dhillon explained that he had learned his lesson in relation to tenancy deposits. He had instructed new letting agents who were now handling all his tenancy deposits. He assured the Tribunal that there would be no further breaches of the regulations in respect of his properties.

### **Findings in Fact**

38. Mr Buchanan, Agne Gauchiute and Mr Hales signed a Private Residential Tenancy Agreement with the first respondent in October 2018.
39. A deposit of £1300 was paid to the respondent in October 2018.
40. Agne Gauchiute moved out of the property in May 2019.
41. Mr Cochrane paid Agne Gauchiute an amount equal to her share of the deposit prior to moving into the property in October 2019.
42. The applicants entered into an unwritten tenancy agreement with the respondent in June 2019, following the termination of the previous tenancy agreement.
43. The deposit of £1300 held in respect of the previous tenancy agreement was carried over to the subsequent agreement.
44. The applicants moved out of the property in March 2020.
45. The respondents failed to return the tenancy deposit.
46. The respondents 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](#).
47. The first respondent was aware of his duty in terms of regulation 3 prior to the commencement of the tenancy.
48. The first respondent is the landlord of multiple properties.
49. The first respondent has breached the tenancy deposit scheme in at least two other properties, for which tenants have been successful in seeking payment under the regulations.
50. The first respondent has instructed a professional letting agent to avoid further breaches of the regulations.

## **Reasons for the Decision**

51. The Tribunal took into account the parties written and oral submissions and the various documents lodged in advance of the Hearing.
52. The Tribunal had regard to the bank statements lodged showing payment of the sum of £1300 in October 2018.
53. The Tribunal was satisfied that the respondent had failed to place the deposit in a suitable tenancy deposit scheme. The Tribunal was satisfied that the present action was raised within three months of the termination of the tenancy. Accordingly, regulation 10 applied.
54. The Tribunal found the applicants to be on the whole credible and believed their submissions in relation to the tenancy deposit. The Tribunal also believed their evidence that they had maintained the property in a reasonable state. The three applicants were clear in their evidence on this point and corroborated each other throughout their evidence.
55. The Tribunal noted that there had been a fourth tenant in the property, Adam Parsons. The Tribunal accepted the position as put forward by the applicants that Mr Parsons had been consulted in relation to the present application and stated that he did not wish to pursue the matter.
56. The Tribunal noted that the first respondent accepted that there had been a breach of the tenancy deposit regulations. He also accepted that the deposit for the original tenancy had been carried over to the tenancy which arose upon the departure of Agne Gauchiute.
57. The Tribunal noted that the first respondent was personally critical of the applicants. He expressed the view that he was a victim of the regulations. He expressed the view that the regulations should be changed which highlighted a lack of regret at the impact the failure to return the deposit had on the applicants. He did express regret at the financial impact the regulations had on himself as a result of other applications made to the Tribunal.
58. The Tribunal accepted the first respondents evidence that he would not breach the regulations in the future as it was clear he was now aware of the consequences of breaching the regulations and had instructed professional letting agents to assist with managing his property portfolio.
59. The Tribunal took into account that that first respondent had failed to adhere to the regulations on more than one occasion.
60. The Tribunal took into account that the deposit had not been returned to the applicants and that this had impacted their financial circumstances.
61. The Tribunal took into account the stress placed on the applicants as a result of the respondents failure to return the deposit and the process of raising an application.
62. The Tribunal noted that the tenancy had a duration of ten months. However, in the previous tenancy dating from October 2018 the deposit of Mr Buchanan and Mr Hales had been unprotected for an extended period.
63. Taking the above factors into consideration the Tribunal determined that the respondent's breach of the regulations was at the more serious end of the scale and in the circumstances an order in the sum of £3150 was reasonable. The reduction from the award of £3500.00 made in October 2020 reflects the Tribunal's acceptance of the first respondent's evidence that he has now instructed a reputable letting agent and will not breach the relevant regulations in future.

**Decision**

The Tribunal determined to grant an order for payment in the sum of THREE THOUSAND ONE HUNDRED AND FIFTY POUNDS (£3150.00)

**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.

**M-C K.**

**15/04/2021**

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**Legal Member/Chair**

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**Date**