

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.**

**Chamber Ref: FTS/HPC/PR/20/1195**

**Re: Property at Flat 8/2, Meadowside Quaywalk, Glasgow Harbour, Glasgow, G11 6ED (“the Property”)**

**Parties:**

**Miss Neha ManjitSingh Sodhi, Flat 8/2, Meadowside Quaywalk, Glasgow Harbour, Glasgow, G11 6ED (“the Applicant”)**

**Mr Steven Butterly, Unknown, Unknown (“the Respondent”)**

**Tribunal Members:**

**Karen Kirk (Legal Member)**

1. This Hearing was a Case Management Discussion (hereinafter referred to as a “CMD”) fixed in terms of Rule 17 of the Procedure Rules and concerned an Application under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (hereinafter referred to as “the Deposit Regulations”). The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained and it was understood a final decision could be made. The hearing took place by teleconference due to the covid-19 pandemic.

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £937.50 against the Respondent in terms of Regulation 10(a) of the Regulations should be made.**

**3. Attendance and Representation**

The Applicant was present and unrepresented.

The Respondent was not present. Previously the Hearing had been postponed as Sheriff Officer delivery had been unsuccessful. Thereafter service took place by advertisement.

#### **4. Preliminary Matters**

There were no preliminary matters raised other than service issues as above. It was noted that the Respondent had now been serviced by way of Advertisement.

#### **5. The Case Management Discussion**

- The Applicant set out her position for the purpose of the CMD. She said she had paid the initial deposit of £625 which he made on 20<sup>th</sup> December 2019. A receipt for same was lodged in process. The Applicant's position was that neither of the regulations were complied with namely the requirement to lodge the deposit with an approved scheme or to give information to the Applicant within the relevant time. She relied on an email from Safe Deposit Scotland dated 25<sup>th</sup> February 2020 stating the deposit had not been lodged as she had been informed. The Applicant detailed the numerous emails she had made to the letting agency seeking information about the deposit between the Respondent and herself and as such she sought an award given the failures. All of these emails had been lodged in process. To date and at the date of the hearing she had no information regarding the deposit as required in terms of Regulation 42 and further she did not have any confirmation that her deposit has been placed in the necessary scheme.

#### **6. Reasons for Decision**

1. Rule 17 of the Procedure Rules provides that a Tribunal can do anything at a CMD which it may do at a Hearing, including making a decision. The Legal Member was satisfied that the Tribunal had everything before it that it would require in order to make a decision having regard to the Overriding Objective. The sufficiency of facts could be ascertained by the many documents lodged by the Applicant. Her evidence was also credible and reliable having regard to the productions lodged.
2. The Application was brought timeously in terms of regulations 9(2) of the Deposit Regulations.
3. The Tenancy Agreement contains a clause explain a deposit was paid of £625 for the property. The Applicant paid this amount on the commencement of the tenancy in December 2019 and the receipt for same had been lodged.
4. In terms of Deposit Regulation 10 if the FTT is satisfied that the landlord did not comply with any duty detailed in Regulation 3 then the FTT must order a landlord to pay the tenant or tenants an amount not exceeding three times the amount of the tenancy deposit.

5. The FTT was satisfied on a balance of probabilities on the information before it that the Respondent did not register the deposit with a deposit protection scheme as required by Regulation 3.
6. The Respondent did provide the information to the Applicant as required by Regulation 42 of the Deposit Regulations. The Applicant is still without that information.
7. If the FTT was satisfied a breach of the regulations had occurred the FTT had to make an order in terms of Regulation 10.
8. In terms of Regulation 10 the FTT is obliged to make an order up to 3 times the deposit of the applicants to the respondent.
9. When considering the Order and level of sanction the FTT must have regard to the severity of the breach and any mitigating factors.
10. The deposit appears to be unsecured throughout the tenancy to date. Of note is the considerable attempts to communicate on the matter by the Applicant and the inconvenience caused to her all of which was evidenced to in the Application.
11. In the case of *Jenson v Fappiano* 2015 G.W.D 4-89 in relation to the amount of such an Award under regulation 10 of the Regulations it was noted that a judicial analysis of the nature of the non-compliance was required and a value attached to reflect a sanction which was fair and proportionate and just given the circumstances.
12. It was further noted that the Sheriff said in said case that the value was not the starting point of three times the deposit minus the mitigating factors it was what was fair and proportionate in the exercise of balanced judicial discretion.
13. The Court of Session in *Tenzin v Russell* 2015 Hous. L.R 11 held that any payment in terms of Regulation 10 of the Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.
14. The FTT was of the view that an Award should be made in the lower to middle end of the scale as the deposit has been unsecured throughout the tenancy on balance and the Applicant has been inconvenienced greatly to date due to the failures. There had also been prejudice to the Applicant. Accordingly in balancing the circumstances it found the Applicant entitled to an award of one and a half times the deposit to the sum of £937.50.

## **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.**

**Karen Kirk**  
**Legal Member/Chair**

**14 October 2020**

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**Date**