



**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 ('the Regulations')**

Chamber Ref: FTS/HPC/PR/19/0733

**Re: Property at 206/5 Quarry Street, Hamilton ML3 6QW
(‘the Property’)**

Parties:

**Miss Kerry Niamh Deegan, 10 Davaar Drive, Forgewood, Motherwell ML1 3TW
(‘the Applicant’)**

**Mr Steven McGibbon , Flat 7, 32 Stonehouse Road, Strathaven
(‘the Respondent’)**

Tribunal Member:

**Joseph C Hughes (Legal Member)
Gary Colquhoun (Tribunal Clerk)**

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the
Tribunal’) granted an Order against the Respondent for payment of SEVEN
HUNDRED POUNDS (£700) Sterling.**

BACKGROUND

1. The Applicant attended the Hearing with her father, Mr John Deegan. Mr Deegan attended primarily as a Supporter but was permitted to provide evidence by providing some further clarification.
2. The Respondent did not attend. He was not represented.
3. Sheriff Officers intimated the papers on 3rd May 2019 to the Respondent.
4. No written representations have been received from the Respondent.
5. The Applicant was the Tenant of the Property and the Respondent is the Landlord of the Property in terms of a Short Term Assured Tenancy between the parties dated 15th September 2017.

6. The Applicant paid a deposit of £350. This is confirmed within the Tenancy Agreement.
7. Igloo were appointed by the Respondent to provide a Tenant Find Only service.
8. The Applicant lodged during the Case Management Discussion a letter from Igloo dated 3rd June 2019 stating that they did not collect any rent or deposit from the Applicant in respect of the property.
9. The Applicant left the Property on Tuesday 8th January 2019 after a fire.
10. The Applicant thereafter enquired about her deposit with the Respondent.
11. The Respondent offered to return the deposit to the tenant by way of bank transfer in a text message on 29th January 2019. No payment was ever received by the Applicant.
12. The deposit was not paid into an approved scheme.
13. The deposit was unprotected since 15th September 2017.

THE HEARING

- 9 The tribunal heard evidence from the attendees.

FINDINGS OF FACT

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- (a) The Applicant was the Tenant of the Property and the Respondent is the Landlord of the Property in terms of a lease between the parties dated 15th September 2017.
- (b) The lease is a Short Assured Tenancy Agreement.
- (c) The Applicant paid a deposit of £350 directly to the Respondent.
- (d) The deposit was not lodged with any approved scheme as required by the Tenancy Deposit Schemes (Scotland) Regulations 2011.
- (e) The Applicant left the Property on 8th January 2019 after a fire.
- (f) The deposit has not been returned to the Applicant.
- (g) The deposit has been unprotected since 15th September 2017.
- (h) There is a breach of the Landlord's duties in respect of the Tenant Deposit.
- (i) The Respondent is not permitted to withhold the tenancy deposit and is in breach of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
- (j) The Applicant lodged an Application (Form G) dated 28th February 2019 with the Tribunal on 6th March 2019.
- (k) The application was accepted by the Tribunal on 23rd April 2019.
- (l) A Case Management Discussion ('CMD') was fixed for 4th June 2019 within Glasgow Tribunals Centre, York Street, Glasgow Room 111 at 10am.
- (m) Sheriff Officers intimated the papers and the CMD on 3rd May 2019.
- (n) The Applicant experienced stress and inconvenience in her personal life resulting from the non return of the deposit.

REASONS FOR DECISION

11. The Respondent has failed to lodge the tenancy deposit as required by law in an approved scheme. This deprives the Applicant from seeking recovery of the deposit through the scheme. The Respondent is in clear breach of his duties as a Landlord in respect of the tenancy deposit. The Respondent has failed to engage with the Tribunal since the Application was lodged by the Applicant

12. It is appropriate that Order for Payment be granted. The Respondent should pay to the Tenant an amount to reflect to circumstances of the case. The Tribunal selected two months rental, namely £700, to be the appropriate amount. The Tribunal considered the failure to lodge the tenancy deposit to be a significant breach of the Regulations having regard to the period from 15th September 2017 till 4th June 2019.

I selected a multiple of two times the original tenancy deposit which I considered to be an appropriate period since the tenancy deposit was effectively unprotected and retained by the Respondent. This is a significant breach of the Regulations. This breach deprived the Applicant the opportunity to access the approved scheme's Dispute Resolution mechanism in terms of Part 6 of the said 2011 Regulations.

DECISION

13. The tribunal granted an Order for Payment against the Respondent:

- (o) To pay the Applicant the sum of SEVEN HUNDRED POUNDS (£700) Sterling in terms of Regulation 10(a) of 2011 Regulations

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.

J Hughes

4th June 2019

Date