



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)  
Act 2014**

**Chamber Ref: FTS/HPC/PR/21/1322**

**Re: Property at 3/1, 14 Bluevale Street, Glasgow, G31 1QJ (“the Property”)**

**Parties:**

**Miss Francesca Romana Viola and Mr Mattia Valeri, 14 Hogarth Gardens,  
Glasgow, G32 6HG (“the Applicants”)**

**Miss Danielle McGuire, c/o Jewel Homes Ltd, Atrium Business Centre, North  
Caldeen Road, Coatbridge, ML5 4EF (“the Respondent”)**

**Tribunal Member:**

**Shirley Evans (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent failed to comply with her duty as a Landlord in terms of Regulations 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) as amended by The Housing (Scotland) Act 2014 (Consequential Provisions) Order 2017 by failing to pay the Applicants’ Tenancy Deposit to the scheme administrator of an Approved Tenancy Deposit Scheme grants an Order against the Respondent for payment to the Applicant of the sum of TWO HUNDRED AND SIX POUNDS AND TWENTY FIVE PENCE (£206.25) Sterling.**

**Background**

1. This is an application dated 26 May 2021 for an order for payment for where it is alleged the Respondent has not paid a deposit into an approved scheme under the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The application is made under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Applicants and the Respondent commencing on 27

January 2020, an email dated 18 March 2021 from the Respondent's letting agent a notice setting out prescribed information in terms of Regulation 42 of the 2011 Regulations.

3. On 16 August 2021, the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 24 August 2021 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 28 September 2021. The Respondent required to lodge written submissions by 14 September 2021. This paperwork was served on the Respondent by David Dempster, Sheriff Officer, Glasgow on 26 August 2021 and the Execution of Service was received by the Tribunal administration. The Respondent made no representations.

### **Case Management Discussion**

5. The Tribunal proceeded with the Case Management Discussion ("CMD") on 28 September 2021 by way of teleconference. The Applicants both appeared. During the course of the CMD Mr Valeri advised he was happy to let Ms Viola represent his interests. Vikki McGuire from Jewel Homes Ltd appeared on behalf of the Respondent.
6. The Tribunal had before it the Private Rented Tenancy Agreement between the parties dated 27 January 2020 with a start date of 27 January 2020, a copy email from the Respondent's agent Jewel Homes Ltd dated 18 March 2021 showing the tenancy was terminating on 15 April 2021 and a notice setting out prescribed information in terms of Regulation 42 of the 2011 Regulations. The Tribunal noted the content of these documents.
7. The Tribunal asked Ms Mc Guire what the Respondent's position was. She explained she was the Respondent's sister and letting agent. The Respondent lived abroad. She had authority to speak on behalf of the Respondent. She accepted the deposit had been paid although late into SafeDeposits Scotland. She put this down to human error. She submitted that looking at the dates the deposit should have been paid into a scheme by 6 March 2020 and was accordingly 9 working days late. The Applicants had not raised any concerns about the late lodging through the course of the tenancy. She accepted the tenancy terminated on 15 April 2021. The full deposit had been repaid to the Applicants on 11 May 2021. The only contact there had been with the Applicants was when Ms Viola had contacted her office asking for the Respondent's address. She asked the Tribunal to consider any award in proportion to the circumstances.
8. Ms Viola explained that she had indeed contacted Jewel Homes to get the Respondent's address after she and Mr Valeri had raised the current

application, but had not been able to secure this. The Applicants' position was they had entered into the tenancy with the Respondent on 27 January 2020 and had paid a £825 deposit to her agents Jewel Homes Ltd. The Tribunal noted that in terms of Clause 11 of the tenancy agreement a deposit of £825 was to be paid at or before the start date of the tenancy, namely 27 January 2020. The Applicants received confirmation the deposit had been paid to SafeDeposits Scotland in or about March 2020. It was not until after the tenancy terminated that the Applicants were aware the deposit had been paid late into the scheme. The Applicants had had no issues with the deposit being unprotected between 6-19 March 2020. They were seeking payment of the equivalent of the deposit of £825 for the Respondent's failure to comply with the 2011 Regulations.

### **Findings in Fact**

9. The Applicants entered into a Private Residential Tenancy Agreement with the Respondent on 27 January 2020 to rent the Property. They paid the Respondent's agent Jewel Homes Ltd £825 deposit on 27 January 2020 in terms of Clause 11 of the said tenancy agreement.
10. The Respondent did not lodge the deposit within 30 working days into an approved scheme. The deposit should have been lodged into an approved scheme by 6 March 2020. The Respondent's agent Jewel Homes lodged the Applicants' deposit with SafeDeposits Scotland on 19 March 2020.
11. The deposit was not protected in accordance with the 2011 Regulations for a period of 13 days between 6-19 March 2020.
12. The Respondent's agent issued the Applicants with the prescribed information after the deposit was lodged in March 2020.
13. The tenancy terminated on 15 April 2021. The Applicants received the return of their full deposit of £825 on 11 May 2021. The current application to the Tribunal was made by the Applicants on 26 May 2021.

### **Reasons for decision**

14. For the purpose of Regulation 9(2) of the 2011 Regulations an application where a landlord has not paid a deposit into a scheme administrator must be made within three months of the tenancy ending. The Tribunal found that the application was made in time, as the tenancy terminated within three months prior to the application being made.
15. Regulation 3 (1) and (2) of the 2011 Regulations provides –

*“(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—*

*(a) pay the deposit to the scheme administrator of an approved scheme; and*

*(b) provide the tenant with the information required under regulation 42.*

*(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.*

The Tribunal accept the deposit was not paid until after the statutory 30 working days. It was not paid into a scheme until 13 days after it should have been. The Respondent provided the information under Regulation 42 as required by Regulation 3(1) (b). The Applicants knew then what had happened to their deposit.

16. The 2011 Regulations were intended, amongst other things to put a landlord and a tenant on equal footing with regard to any tenancy deposit and to provide a mechanism for resolving any dispute between them with regard to the return of the deposit to the landlord or tenant or divided between both, at the termination of a tenancy.
17. The amount to be paid to the Applicants is not said to refer to any loss suffered by the Applicants. Accordingly, any amount awarded by the Tribunal in such an application cannot be said to be compensatory. The Tribunal in assessing the sanction level has to impose a fair, proportionate and just sanction in the circumstances, always having regard to the purpose of the 2011 Regulations and the gravity of the breach. The Regulations do not distinguish between a professional and non-professional landlord such as the Respondent. The obligation is absolute on the landlord to pay the deposit into an Approved Scheme.
18. In assessing the amount awarded, the Tribunal has discretion to make an award of up to three times the amount of the deposit, in terms of Regulation 10 of the 2011 Regulations.
19. The Tribunal considered the Respondent's failure to comply with the 2011 Regulations was not wilful. The Tribunal accepted Ms McGuire's explanation that the failure was down to human error.
20. Despite the Tribunal being satisfied that the Respondent had failed to comply with her duties under Regulations 3 (1) of the 2011 Regulations, the purpose of the 2011 Regulations had not been defeated. The Respondent had paid the deposit into an approved scheme 13 days late, the deposit was protected through the remainder of the tenancy until 15 April 2021, the Applicants had

not been inconvenienced by the late lodging and had received the return of the full deposit after the tenancy had terminated. .

21. In all the circumstances, the Tribunal considered that a fair, proportionate and just amount to be paid to the Applicant was a quarter of the deposit.

### **Decision**

22. The Tribunal accordingly made an Order for Payment by the Respondent to the Applicants of £206.25.

### **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.



**28 September 2021**

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**Legal Member**

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**Date**