



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

**Chamber Ref: FTS/HPC/PR/20/1815**

**Re: Property at 189 Craigielea Road, Renfrew, PA4 8EW (“the Property”)**

**Parties:**

**Ms Kathryn Allan, 3 Cedar Gardens, Glasgow, G73 4HD (“the Applicant”)**

**Mr Mark Crilly, 64 John Neilston Avenue, Paisley, PA1 2SX (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)**

**Ahsan Khan (Ordinary Member)**

**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 £1125 should be made in favour of the Applicant.**

**Background**

1. By application received on 18 June 2020, the Applicant seeks an order in terms of Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and Regulations 9 and 10 of the 2011 Regulations. The Applicant lodged an unsigned tenancy agreement, screenshot of a bank transaction and emails from Safe Deposit Scotland, MyDeposit Scotland and Letting Protection Service in support of the application. The emails state that the three Tenancy Deposit Schemes have no record of her deposit. The tenancy agreement states that the tenancy started on 8 January 2020 and a deposit of £450 was to be paid. The agreement also states, in a schedule at the end of the document, that the deposit will be held by the Respondent.

2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer. The application called for a case management discussion (“CMD”) on 12 October 2020, by telephone conference call. The Applicant was represented by Mr Gallagher from Renfrewshire Citizens Advice Bureau. The Respondent did not participate and was not represented. A related application under Chamber reference CV/20/1816 also called. Following discussion with the Applicant’s representative, the Legal Member continued the application to a hearing. The Legal Member indicated that it would be useful for the Tribunal to be provided with information and evidence regarding the whereabouts of the signed tenancy agreement, the Respondent’s landlord registration status, the circumstances around the request for return of the deposit, whether or not the Respondent lets out other properties and the consequences for the Applicant as a result of the deposit not being returned. An order for payment of £450 was granted in favour of the Applicant in the related application.
3. On 21 October 2020, parties were notified that the application would call for a hearing by telephone conference call on 17 November 2020, at 10am. They were provided with telephone number and passcode and advised that they were required to participate in the hearing. The Respondent was notified by recorded delivery letter which was successfully delivered by Royal Mail on 22 October 2020. On 16 November 2020, the Applicant’s representative submitted an email from the Applicant. This stated that - the tenancy agreement had been emailed to her but never signed by either party; she had been without lights or hot water at the property during lockdown for two weeks as the Respondent refused to arrange for an electrician to attend; the Applicant is a nurse and was nursing COVID patients when the Respondent sent her WhatsApp messages stating that he was a key worker and she a “silly little girl” who he would see “in court”; she had been caused “untold stress and worry trying to find new accommodation for myself and my two children in the middle of lockdown in addition to having to borrow money for a deposit and did not provide a landlord reference for my current letting agent”. The Applicant concluded by saying that she was due to work on 17 November 2020 and it was unlikely that she would be able to participate in the hearing in person.
4. The application called for a hearing on 17 November 2020 at 10am. The Applicant was again represented by Mr Gallagher. The Respondent did not participate and was not represented. He did not contact the Tribunal in advance of the hearing and did not lodge written representations.

## **The Hearing**

5. From the application form, the documents lodged in support of the application and the information provided at the CMD the Tribunal noted the following: -
  - (i) The tenancy started on 8 January 2020 and terminated on 7 June 2020.

- (ii) The Applicant paid a deposit of £450, with her first instalment of rent, prior to the start of the tenancy.
- (iii) The deposit of £450 was not lodged in an approved tenancy deposit scheme by the Respondent.

6. Mr Gallagher referred the Tribunal to the email from the Applicant. He advised that the tenancy agreement submitted with the application was emailed to the Applicant but was not signed by her or the Respondent. In response to questions about the schedule to the agreement, which states that the deposit will be held by the Respondent, Mr Gallagher commented that this was unusual as landlords are required by law to lodge deposits with an approved scheme. He is not aware of any discussion taking place between the parties regarding this clause. He advised that the tenancy was terminated by the Applicant. She had to move because of repairs issues at the property. Following termination of the tenancy the Applicant made repeated requests for the return of the deposit. These were rejected by the Respondent. As mentioned in the Applicant's email, he called her a "silly girl" and made it clear he was not prepared to return the deposit. He provided no reasons for this. There was no complaint about damage to the property. During the WhatsApp correspondence it became clear that the deposit was in his possession and had not been lodged in a scheme. The Applicant has had no recent contact from the Respondent and the deposit of £450 has not been repaid to her.

7. Mr Gallagher advised the Tribunal that he checked the Scottish Landlord Register, both at the time of the application and recently, and noted that the Respondent does not appear to be registered. He is unable to provide any information about the Respondent's experience as a landlord or whether he lets out other properties. He referred the Tribunal again to the Applicant's email and confirmed that she had been caused stress, inconvenience, and worry. She has suffered financial hardship as a result of the deposit not being returned to her. Mr Gallagher concluded that the Applicant invited the Tribunal to determine the appropriate level of award.

### **Findings in Fact**

- 8. The Applicant is the former tenant of the property.
- 9. The tenancy started on 8 January 2020.
- 10. The Respondent is the owner and former landlord of the property.
- 11. The Applicant paid a deposit of £450 in connection with the tenancy.
- 12. The tenancy terminated on 7 June 2020.

13. The deposit paid by the Applicant was not lodged by the Respondent in an approved tenancy deposit scheme.
14. The deposit paid by the Applicant was not returned to the Applicant at the end of the tenancy.

### Reasons for Decision

15. Regulation 3 of the 2011 Regulations states –

“(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.

(1A) Paragraph (1) does not apply –

- (a) Where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and
- (b) The full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord,

Within 30 working days of the beginning of the tenancy.

16. The Tribunal is satisfied that the Applicant’s tenancy is a relevant tenancy in terms of the 2011 Regulations and that a deposit of £450 was paid and not lodged in an approved deposit scheme. The Tribunal also notes that the application was lodged with the Tribunal on 18 June 2020. The Applicant has therefore complied with Regulation (9)(2) of the 2011 Regulations, which requires an application to be lodged no later than 3 months after the tenancy had ended.

17. Regulation 10 of the 2011 Regulations stipulates that if the Tribunal is satisfied that the landlord did not comply with a duty in terms of regulation 3, it “ **(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.**” The Tribunal therefore determines that an order must be made in favour of the Applicant.

18. The Respondent did not attend either the CMD or the hearing and did not submit written representations in connection with the application. The Applicant was unable to provide any information regarding the Respondent, his experience as a landlord or his reasons for failing to lodge the deposit in a scheme. It follows that The Tribunal has no information about the Respondent’s circumstances or any mitigation which would otherwise be considered in the assessment of the penalty to be imposed.

**19.** The Tribunal notes that the Respondent's decision to hold onto the deposit himself appears to be deliberate, as it is specifically mentioned in the tenancy agreement. The Tribunal also notes that the deposit was unprotected throughout the tenancy and that it was not returned to the Applicant at the end of the tenancy. She was provided with no reasons for the retention and did not have the opportunity to seek recovery through a tenancy deposit scheme adjudication process. She has suffered financial loss as a result and has been caused stress and anxiety as a result of the Respondent's actions. In the circumstances, and in the absence of any explanation or mitigation, the Tribunal is satisfied that the Respondent's failure is at the higher end of the scale, and that an award of two and a half times the deposit is appropriate.

## **Decision**

**20.** The Tribunal determines that an order for payment of the sum of £1125 should be made in favour of the Applicant.

## **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.**

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**Josephine Bonnar, Legal Member**

**17 November 2020**