



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under The Tenancy Deposit Schemes (Scotland) Regulations 2011 as amended by The Tenancy Deposit Schemes (Scotland) Amendment Regulations 2019. (“the Regulations”).**

**Chamber Ref: FTS/HPC/PR/23/2222**

**Re: Property at Flat 16, 3 Lochend Park View, Edinburgh, EH7 5FB (“the Property”)**

**Parties:**

**Mrs Zhihan Huang, Flat 4, 2 Charteris Place, Edinburgh, EH8 8FN (“the Applicant”)**

**Mr Guifu Liu, Flat 16, 3 Lochend Park View, Edinburgh, EH7 5FB (“the Respondent”)**

**Tribunal Member:**

**Martin McAllister (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the sum of Two Thousand Four Hundred Pounds (£2400) to the Applicant.**

**Background**

- 1. The Tribunal received an application from the Applicant dated 2 July 2023 seeking payment of a sum under regulation 10(a) of the Regulations. The application was accepted for determination on 18 July 2023. The Respondent submitted written representations on 17 August 2023.**
- 2. The Applicant also submitted an application for payment in respect of return of the tenancy deposit which had been paid by her. This application was dealt with at a case management discussion immediately following determination of this application.**

## The Case Management Discussion

3. A case management discussion was held by teleconference on 5 September 2023.
4. The Applicant and Respondent were present. It was noted that the application had been submitted by a representative of the Applicant. The Applicant intimated that she was content that matters proceed without the representative being present.
5. The Legal Member explained the purpose of a case management discussion.
6. The Tribunal had regard to the following documents:
  - i) Application dated 2 July 2023;
  - ii) Private Residential Tenancy Agreement dated 9. June 2022;
  - iii) Email from three tenancy deposit schemes confirming that no tenancy deposit held in respect of the Property;
  - iv) Various emails and text messages submitted by the Applicant.
  - v) Written representations from the Respondent dated 17 August 2023.

## 7. The Law

### The Tenancy Deposit Schemes (Scotland) Regulations 2011

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*3. (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.*

*(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—*

*(a) in respect of which the landlord is a relevant person; and*

*(b) by virtue of which a house is occupied by an unconnected person,*

*unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.*

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**9. (1)** *A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.*

*(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.*

**10.** *If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—*

*(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and*

*(b) may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to—*

*(i) pay the tenancy deposit to an approved scheme; or*

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

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## **8. Findings in Fact**

**8.1** **The Applicants and the Respondent were parties to a Private Residential Tenancy Agreement for the Property.**

**8.2** **The tenancy commenced on 1 July 2022 and came to an end on 20 May 2022.**

**8.3** **The Applicants paid a tenancy deposit of £1,100 to the Respondent.**

**8.4** **The Respondent did not lodge the tenancy deposit with an approved tenancy deposit scheme.**

**8.5** **The tenancy deposit has not been repaid to the Applicant.**

## **9. Finding in Fact and Law**

**The tenancy deposit required to be paid to an approved tenancy deposit scheme by 4 August 2022 which was thirty working days from commencement of the tenancy.**

## **The Parties' Position**

**10.** **Parties helpfully set out what was agreed between them. They entered into a private residential tenancy agreement for the Property with a commencement date of 1<sup>st</sup> July 2022.**

**11.** **Mrs Huang said that she paid a tenancy deposit of £1,100 to Mr Liu and he accepted that he had received it. Mr Liu accepted that he still had the tenancy deposit and had not returned it to Mrs Huang.**

- 12. Mr Liu set out his position with regard to the tenancy deposit. He said that the tenancy was set up in a hurry because he was leaving the country. He said that he previously resided in the Property and is living in it once more.**
- 13. Mr Liu said that he had checked the Scottish Government website and had come to the view that a landlord residing in a tenanted property did not require to comply with the tenancy deposit regulations. He said that he had lived in the Property immediately before the tenancy commenced and he thought that this meant that he was a resident and was “exempt” from the Regulations.**
- 14. Mr Liu was directed to the tenancy agreement and he agreed that he had prepared it and that it was the model private residential tenancy agreement as provided by the Scottish Government. His attention was drawn to clause 10: *“At the start date of the tenancy or before, a deposit of £1100 will be paid by the Tenant to the Landlord. The Landlord will issue a receipt for the deposit to the Tenant. No interest shall be paid by the Landlord to the Tenant for the deposit. At the end of the tenancy the Tenant should ask the Landlord to release the deposit and the amounts payable to each party.”* Mr Liu agreed that this was different from the standard wording in the model tenancy agreement and he accepted that he had removed references to a tenancy deposit scheme. He said that he had done this because he thought that, as a resident he did not require to comply with the Regulations.**
- 15. Mr Liu said that at no time did the Applicant ask for the tenancy deposit to be placed with an approved tenancy deposit scheme. Mrs Huang said that it was not her place to do this and that the Respondent should have complied with his obligations as a landlord.**
- 16. Mr Liu agreed that, at no time was it intended for him to live in the Property during the tenancy which he had granted to the Applicant.**
- 17. Mr Liu said that it was his fault that the deposit was not dealt with properly and he described it as “a genuine mistake” and he said that he was sorry for any inconvenience caused to Mrs Huang.**
- 18. Mr Liu said that he owns no other property in the United Kingdom and that he has now registered with an approved tenancy deposit scheme in case he enters into another tenancy agreement in the future.**
- 19. Mr Liu said that he had not returned the deposit because there were issues with the Property and the Applicant at the termination of the tenancy and he was retaining the deposit because the costs which he had incurred were in excess of £1100.**

20. Parties agreed that there was no additional evidence to be put before the Tribunal and that there was therefore no need for determination of the application to be continued to a Hearing.

#### Determination

21. The creation of regulations to cover tenancy deposits was to protect tenants' funds and provide a structured process of dispute resolution. The Respondent received £1,100 as a tenancy deposit but did not lodge it with an approved deposit scheme within thirty working days of the beginning of the tenancy.
22. The Regulations are clear in stating that, where there is a breach such as this, the Tribunal must make an order requiring a Landlord to pay a Tenant a sum not exceeding three times the amount of the tenancy deposit. The amount is a matter of judicial discretion and must reflect what is a fair, proportionate and just sanction, having regard to the purpose of the Regulations and the gravity of the breach. It is a balancing act.
23. In this case, the Tribunal had regard to the fact that the deposit was unprotected for the whole of the tenancy and that it has still not been returned by the Respondent. The Respondent has retained the tenancy deposit for reasons with regard to costs which he said he has incurred because of the Applicant. The Tribunal had regard to the fact that the Applicant was and is being denied the opportunity to have resolution of such matters being carried out by an approved tenancy deposit scheme.
24. In arriving at a determination of the application, the Tribunal considered what aggravating and mitigating features there might be.
25. The Respondent is not a *“professional”* landlord. The Tribunal accepted the reasoning of Sheriff Cruickshank in the case *Ahmed v Russell 2023UT07* in which he stated that *“amateur”* and *“professional”* landlords should not be treated differently when a sanction is being arrived at.
26. Sheriff Cruickshank also stated that *“The sanction which is imposed is to mark the gravity of the breach which has occurred. The purpose of the sanction is not to compensate the tenant. The level of sanction should reflect the level of overall culpability in each case measured against the nature and extent of the 2011 Regulations.”*
27. The Respondent's position was that he erred because he thought that he was a *“resident.”* This is not considered to be a mitigating factor because it is not credible that a person would consider that the Regulations did not apply to him because, at some point in the past, he had resided in the property which is being let.

**28. The Tribunal considered that there were four aggravating factors which had to be considered:**

**28.1 The tenancy deposit was unprotected for the whole of the tenancy which amounted to three hundred and twenty four days.**

**28.2 The Respondent amended the Scottish Government Model Private Residential Tenancy Agreement to remove reference to approved tenancy deposit schemes and the obligation of a landlord to place a tenancy deposit in such a scheme.**

**28.3 The tenancy deposit has not yet been returned to the Applicant and is being retained by the Respondent.**

**28.4 The Applicant has been denied the opportunity of engaging with a process of dispute resolution in respect of the issues for which the Respondent has stated that he is retaining the tenancy deposit.**

**29. The Tribunal required to determine the appropriate level of sanction which could be any amount from £1 to £3300. It considered a sanction of £2400 to be fair and proportionate taking into account all factors.**

## **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.**

**Martin J. McAllister  
Legal Member  
5 September 2023**