



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

**Chamber Ref: FTS/HPC/PR/23/0274**

**Re: Property at 11 Cadboll Road, Invergordon, Highlands, IV18 0HR ("the  
Property")**

**Parties:**

**Mr Brian Flett, Flat 5 Royal Court, Joss Street, Invergordon, IV18 0AS ("the  
Applicant")**

**Mr Allan Stone, 11 Cadboll Road, Invergordon, Highlands, IV18 0HR ("the  
Respondent")**

**Tribunal Member:**

**Gillian Buchanan (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined that:-**

At the Case Management Discussion ("CMD") which took place by telephone conference on 27 March 2023 the Applicant was in attendance. The Respondent was neither present nor represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

Prior to the CMD the Tribunal had received from the Applicant the following additional representations:-

- i. Letter dated 31 January 2023 with attachments; and
- ii. Email and letter 17 March 2023.

The tribunal also received the following written representations from the Respondent:-

- i. Email dated 14 March 2023 with attachments;
- ii. Email dated 21 March 2023;

- iii. Email dated 23 March 2023; and
- iv. Email dated 24 March 2023 with attachments.

The CMD was in respect of this matter and the related case between the parties bearing reference FTS.HPC.CV.23.0559.

### **Background**

The tribunal noted the following background:-

- i. The parties entered into a Short Assured Tenancy Agreement.
- ii. The initial term of the tenancy was 15 June 2017 to 15 December 2017.
- iii. The tenancy continued beyond the initial term on a month to month basis.
- iv. The rent payable in terms of the tenancy was £625 per month.
- v. The deposit payable in terms of the tenancy was £625.

### **The CMD**

At the CMD the Applicant made the following additional oral representations in respect of this matter and the related case between the parties bearing reference FTS.HPC.CV.23.0559:-

- i. The deposit was paid by the Applicant to the Respondent on 1 June 2017.
- ii. During the tenancy the Applicant asked the Respondent numerous times if the deposit had been lodged into an approved scheme. The Respondent simply said everything would be sorted.
- iii. The tenancy ended on 31 October 2022.
- iv. In August 2022 the Applicant asked the Respondent for proof of the deposit having been lodged into an approved scheme. Nothing was supplied.
- v. The Applicant discovered the Respondent was not paying his mortgage by means of a letter sent by recorded delivery to the occupier of the Property which he collected from the Post Office. The Applicant therefor started paying rent weekly rather than monthly due to his concern that the Property might be repossessed at any time. He said to the Respondent he would resume paying monthly if the deposit was paid into an approved scheme.
- vi. The Applicant did not know if the Respondent owns any other properties.
- vii. He did not know if the Respondent was registered as a landlord.
- viii. The Property was rented out briefly by the Respondent prior to the tenancy between the parties.
- ix. The deposit of £625 has never been returned to the Applicant.
- x. The adjudication process operated by approved schemes was not available to the Applicant.
- xi. The Applicant seeks a penalty be imposed on the Respondent in terms of The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations").

### **Findings in Fact**

- i. The parties entered into a Short Assured Tenancy Agreement.
- ii. The initial term of the tenancy was 15 June 2017 to 15 December 2017.
- iii. The tenancy continued beyond the initial term on a month to month basis.
- iv. The rent payable in terms of the tenancy was £625 per month.
- v. The deposit payable in terms of the tenancy was £625.
- vi. The deposit was paid by the Applicant to the Respondent on 1 June 2017.
- vii. During the tenancy the Applicant asked the Respondent numerous times if the deposit had been lodged into an approved scheme.

- viii. The deposit was never paid into an approved scheme during the term of the tenancy.
- ix. The tenancy ended on 31 October 2022.
- x. The deposit of £625 has never been returned to the Applicant.
- xi. The adjudication scheme operated by approved schemes was not available to the Applicant.

## **Reasons for Decision**

The Respondent did not attend the CMD. In his written representations to the Tribunal the Respondent did not dispute that the deposit had not been lodged into an approved scheme as required in terms of the Regulations. He offered no explanation of any sort as to why he did not comply with his obligations under the Regulations. The Respondent did not attend the CMD to explain his position. Other references by the Respondent to the Property not having been left in an appropriate condition by the Applicant on his departure and resultant costs incurred are simply not relevant to the application and the Respondent's failure to comply with the Regulations.

The factual background therefore narrated by the Applicant within the application papers and on his behalf orally at the CMD was accepted by the Tribunal.

The Tribunal takes a landlord's failure to comply with the Regulations very seriously.

In terms of Regulation 10 of the Regulations it is stated:-

*"If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal -*

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

In determining the amount payable by the Respondent to the Applicant the Tribunal took into account the following:-

- i. That the deposit was unprotected for the entire duration of the tenancy, being in excess of 5 years.
- ii. That the Applicant asked the Respondent to lodge the deposit into an approved scheme but he failed to do so.
- iii. That the Respondent has still not refunded the deposit to the Applicant.
- iv. That the Applicant has been deprived of the adjudication process available to the parties to a tenancy where a deposit paid as been correctly lodged into an approved scheme as required by the Regulations.
- v. That the tribunal has no information from the landlord to explain his failures or his position as a commercial landlord.
- vi. That the Respondent's failure to comply with the Regulations is not excusable.

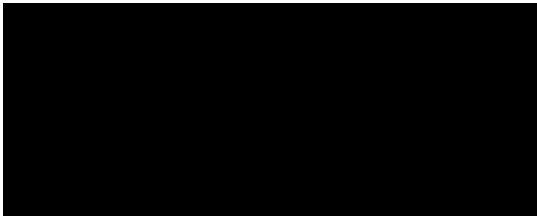
The Tribunal therefore determined that, having regard to the foregoing and in the absence of any other mitigating circumstances from the Respondent, the Respondent must pay to the Applicant a sum of £1,875 by way of a penalty for his failure to comply with the Regulations, being three times the deposit. The Respondent's breach of the Regulations falls at the most serious end of the scale and such a penalty is proportionate, fair and just in the circumstances.

**Decision**

The Respondent is ordered to pay to the Applicant a sum of £1,875.

**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.**



**Legal Member/Chair**

**27 March 2023**

**Date**