

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



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

**Chamber Ref: FTS/HPC/PR/18/2471**

**Re: Property at 184 Merkland Lane, Aberdeen, AB24 5RX ("the Property")**

**Parties:**

**Miss Kudzaishe Chiriseri, Miss Sarah Zaman, 59 Mary Emslie Court, Aberdeen,  
AB24 5BS ("the Applicants")**

**Mr Paul Cocozza, 12 Dundas Street, Bo'ness, EH51 0DG ("the Respondent")**

**Tribunal Members:**

**Petra Hennig-McFatridge (Legal Member)**

**Decision in absence of the Respondent**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined that an order for £800 in terms of Regulation 10 should  
be made.**

**BACKGROUND:**

The Applicants both made an application under Rule 103 of the Rules of Procedure on received on 10 September 2018 for payment of three times the deposit paid by each of them to the Respondent.

The Applicants submitted to the Tribunal a copy of tenancy agreement between each Applicant and the Respondent for a Short Assured Tenancy starting 21 August 2017 until 20 August 2018, together with copy AT5, the Safety Deposit Scotland Deposit Protection Certificate dated 11 April 2018, Text exchange between Ms Chiriseri and SafeDepositss Scotland dated 28 June 2018 confirming that their details were now up to date but that prior to 16 April 2018 neither tenant had an email address on their account and the telephone number provided for the deposit was a specific telephone number.

The Respondent provided written representations on 28 January 2019 confirming he would not be attending the Case Management Discussion (CMD) and stating "we will not be in a position to attend any meetings and would respectfully request this is set aside as we have shown that funds were placed in an approved scheme." He

submitted a copy of the SafeDeposits Scotland adjudication decision, photographs of the property, accounts for each Applicant and a copy of his submissions to SafeDeposits Scotland dated 4 October 2018.

A Case Management Discussion was fixed for 15 February 2019. The Respondent did not attend. The Respondent had been served with the CMD invitation and application documentation by Sheriff Officers on 24 January 2019. This included the information that the tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision on the application which may involve making or refusing a payment order. On receipt of the Respondent's submission the Tribunal on 29 January 2019 again confirmed to the Respondent that the CMD would be going ahead.

Both Applicants attended.

**The evidence:**

The Applicants referred to their applications and explained further that they realised the deposit had been paid into a scheme when the Respondent Chiriseri received a letter from SafeDeposits Scotland in April 2018 advising that SafeDeposits Scotland had been sending text messages to the Respondent Zaman and had received no reply. Both confirmed that the text messages did not arrive at the Respondent Zaman's telephone number as this had not been provided by the landlord, who instead had given SafeDeposits Scotland his own telephone number. Neither had received notification from the Respondent directly of the lodging of the deposit. Neither had been made aware by the landlord of the date the deposit was paid, the details of the deposit scheme or any other issues regarding the deposit. The deposit had been paid to the landlord at the start of the tenancy and each had paid £400, a total of £800. They accepted that the Respondent's father may have been ill at the time of the commencement of the tenancy. They referred to problems with the tenancy resulting in a case before the Tribunal regarding rent arrears and to the outcome of the adjudication regarding the deposit. They confirmed they moved out on 10 August 2018.

The Respondent in his representations did not dispute that the deposit was not paid into a tenancy deposit scheme until 11 April 2018. The deposit lodged was for the amount of £800. He did not dispute that he provided his details rather than the tenant's contact details to the tenancy deposit scheme when he did lodge the funds. He did not dispute that text messages had not been passed on. He, too, referred in his correspondence to problems with the tenancy and the adjudication case as well as a case against the two Applicants before the Tribunal and stated that the funds were in fact paid into a SafeDeposits Scotland and thus is seeking that this matter be set aside as the duty was complied with. He stated in his correspondence 4 October 2018 lodged in evidence that he understands "there is a legal duty to have the depots scheme set up when the tenants forwarded their funds. Due to my father having a terminal illness which he succumbed to in October 2017 I wasn't focussed on my Landlord obligations at the time." And "As the account was in my name I assumed I was the point of contact and allocated my contact details accordingly".

**The legal test:**

In terms of Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 an application under that Regulation must be made within 3 months of the end of the tenancy. In terms of Regulation 10 "if satisfied that the landlord did not comply with any duty in Regulation 3 the First tier Tribunal 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 First tier Tribunal 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."

In terms of Regulation 3 "(1) A landlord who had received a tenancy deposit in connection with a relevant tenancy must, within 30 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."

In terms of Regulation 42 (2) the information includes " (a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord, (b) the date on which the tenancy deposit was paid to the scheme administrator...(d) a statement that the landlord is , or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of 2004 Act, (e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid and (f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement. (3) the information in paragraph (2) must be provided (a) where the tenancy deposit is paid in compliance with regulation 3 (1), within the timescale of set out in that regulation"

**Findings in fact:**

1. The Applicants both paid a deposit of £400 each to the landlord on 21 August 2017.
2. The tenancy started on 21 August 2017.
3. The tenancy agreement makes no provision for a deposit and does not indicate where this would be lodged.
4. The Applicants moved out of the property on 10 August 2018
5. The deposit was lodged with SafeDeposits Scotland on 11 April 2018.
6. The date the deposit should have been lodged at the latest, given the date of the commencement of the tenancy on 21 August 2017, was after 30 working days and thus on 2 October 2017.
7. The Respondent father died in October 2017 after a terminal illness.
8. The deposit was adjudicated on by SafeDeposits Scotland and £100 allocated to the Respondent and £700 returned to the Applicants.
9. The Respondent had entered his own contact details in the SafeDeposits Scotland account and not the telephone number or email address of the Applicants.
10. Text messages from the tenancy deposit scheme asking the Respondent Zaman for information thus did not reach her.
11. The Applicants were only advised of the tenancy deposit scheme details by the SafeDeposits Scotland.

**Reasons for Decision:**

The Tribunal considered that the essential and material facts of the case were not disputed. The Respondent had admitted the breach and provided an explanation for it. He did not attend the CMD.

**In terms of Rule 17 of the Rules of Procedure:**

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

**However, in terms of Rule 18 of the Rules of Procedure:**

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,  
a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The Respondent did not dispute that the deposit had not been lodged and that he had provided his own details to the tenancy deposit scheme. The date when the tenancy commenced and ended as well as the date when the deposit was paid into the SafeDeposits Scotland scheme were not in dispute. The Respondent had clearly stated in his email of 28 January 2019 that he "will not be in a position to attend any meetings". The Tribunal did not consider that there was any need for a hearing as the material and important facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. It considered that given the statement of the Respondent he would wish the matter dealt with without a full hearing. It did not consider that it would be contrary to the interests of the parties to decide the matter at the CMD.

The tribunal considers that the landlord did not comply with the requirements of Regulations 3 and 42 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

Ultimately the Regulations were put in place to ensure compliance with the Scheme and the benefits of dispute resolution in cases of disputed deposit cases, which the Schemes provide.

Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 is a regulatory sanction to punish the landlord for non-compliance with the rules. There have been various approaches in calculating the appropriate sanction in terms of the Regulations. The preferred approach appears to be that adopted in *Jenson v Fappiano*, 2015 GWD 04-89 should be "fair, proportionate and just, having regard to the seriousness of the con-compliance".

In this context it is important that the matters raised by both the Applicants and the Respondent about the other problems with the tenancy and the matters regarding any funds due from rent arrears etc are not relevant to these proceedings. All these have their own remedies and indeed the deposit was adjudicated on by the dispute resolution service and the other matters determined in decisions by the First tier Tribunal.

All the Tribunal can consider in the context of this application is whether a breach of the Regulations occurred, under what circumstances and with which consequences.

The Tribunal has discretion to award up to three times the amount of the deposit, in this case the upper limit would be £2400. The Applicants asked for payment of the maximum amount possible. The Respondent asked for the matter to be set aside. However, this is not an option for the Tribunal as the Regulations are clear that if the landlord did not comply with the Regulations an order must be made.

The Tribunal took into account:

1. the length of time the deposit was unprotected, namely 233 out of a total 355 days,
2. that the landlord and Respondent clearly knew of the landlord duties and had in fact stated to the SafeDeposits Scotland adjudication service that he was aware of the legal duty
3. that the Respondent did not provide any notification to the tenants regarding the deposit even once it was put in an appropriate scheme
4. that the tenancy had come to an end and the SafeDeposits Scotland dispute resolution scheme had been successfully invoked by the parties
5. that the Respondent admitted the breach of the duty to lodge the deposit at an early stage
6. that the Respondent made a mistake due to his private circumstances at the time
7. that the Respondent did not provide the scheme with the correct contact details for the tenants and did not pass on messages from the scheme to the tenant Zaman, which only came to light when the scheme wrote to Ms Chiriseri.

8. That this further potentially endangered the deposit as the tenants were uninformed of where the funds had been placed and were unaware the scheme tried to contact them

Taking this into account the Tribunal considered that in all the circumstances the amount should not be at the maximum or minimum level in this case. Clearly the Respondent was distracted by the illness of his father at the time. The deposit was ultimately paid and the dispute resolution mechanism accessed. This is an important consideration in the matter. But the breach initially resulted in the protection of the deposit envisaged by the Regulations not being provided for a significant period of the tenancy. As a starting point the Tribunal considered the length of non protection and thus considered a base sum of £800 :355 x 233 = £525.07. It further considered that the additional failings of the Respondent at the time the deposit was finally paid into the scheme by not advising the tenants and providing the wrong contact details potentially further endangered the access of the Applicants to the scheme. It also considered that the Respondent by his own admission was not ignorant of the need to pay the funds into the tenancy deposit scheme.

In all the circumstances the tribunal considered it fair, proportionate and just to make an order against the Respondent for payment of the sum of £800 being the equivalent of one time the deposit amount to the Applicants.

**Decision:**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) grants an order against the Respondent for payment to the Applicants of the sum of £800 in terms of Regulation 10 (a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.**

**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.**

Mrs Petra Hennig-McFatridge

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**Legal Member/Chair**

15.2.19  
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**Date**