



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Regulations 3, 9 and 10 of The  
Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/19/0064**

**Re: Property at 611 London Road, Flat 2/1, Glasgow, G40 1NE (“the Property”)**

**Parties:**

**Mr Frank Frankgate, c/o Living Rent, 365 Paisley Road West, Glasgow, G51  
1LX (“the Applicant”)**

**Ocean Investments (Scotland) Ltd, Harvey's Laundry, 24 Fairley Street,  
Glasgow, G51 2SN (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (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 payment in the amount of £1287,  
representing three times the deposit amount should be made.**

**Background**

The Applicant lodged an Application with the Tribunal on 8<sup>th</sup> January 2019, under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking an order for payment of three times the tenancy deposit in terms of Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Lodged with the Application were:

1. Copy of the Tenancy Agreement
2. Copy of an email from Harveys Property dated 17<sup>th</sup> August 2018

Before the Application was accepted the Applicant was asked to confirm the date on which the tenancy terminated. He confirmed that he paid rent until 23<sup>rd</sup> November 2018.

The Application was served correctly by Sheriff Officer.

### **Case Management Discussion**

The Applicant appeared personally, and was accompanied by Ayesha Amin, who was his supporter. There was no appearance by the Respondents, or by anyone representing them.

The Chairperson explained the purposes of a Case Management Discussion in terms of Rule 17 of the Rules, and confirmed that she had the power to make a decision at the Case Management Discussion if she felt it was appropriate.

The Applicant was asked to present his case. He said that he took entry on 3<sup>rd</sup> May 2018. The respondents used a Short Assured Tenancy Agreement, rather than a Private Residential Tenancy Agreement. The Applicant was aware that a Short Assured Tenancy was no longer a valid type of tenancy if begun after 1<sup>st</sup> December 2017.

The Applicant said that he paid a deposit of £429. He contacted the Letting Agents, Harveys Property, on 9<sup>th</sup> August 2018 by email, asking if his deposit had been placed in a tenancy deposit scheme. He received a reply on 17<sup>th</sup> August 2018 which said:

*"We have checked our files and as our colleague went on maternity leave earlier than expected, it was not sent to the deposit scheme. However, I can confirm we have your deposit logged with us and you will receive this back when your tenancy ends.*

*We apologise for this and assure you we will return your deposit at the end of your tenancy should there be no damage to the flat caused by you.*

*Regards,*

*Harveys Property Team"*

The Applicant vacated the property on 21<sup>st</sup> November 2018, but paid rent until 23<sup>rd</sup> November 2018. He said that as he was moving out he was being hurried as someone else was trying to move furniture in.

The Chairperson asked if he had received return of his deposit. The Applicant said that he received it eventually, after some reluctance on the part of the Respondents. The Applicant said that he was accused of having removed some of the furniture which was being moved in as he was moving out.

The Applicant said that the whole experience of renting from the respondents was fraught, and he had other complaints about them which were not within the scope of this Application.

### **Findings In Fact**

1. The Applicant and the respondents entered in to a Tenancy for rent of the property.
2. The Applicant paid a deposit of £429.
3. The Applicant's deposit was not placed in a Tenancy Deposit Scheme.
4. The Applicant's deposit was returned to him in full.

### **Reasons For Decision**

The Regulations were enacted in 2011 to provide some protection for tenants in relation to the security of their deposits, and also to provide a method for assessing if a landlord was correct in retaining some, or all, of the deposit towards repairs.

Regulation 3 of the Regulations compels a landlord to place a tenancy deposit in to an approved scheme within 30 working days of receiving it.

Regulation 10 of the Regulations allows for the Tribunal to order a landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit.

The Tribunal has discretion in deciding the amount. In this case there do not appear to be any mitigating factors to persuade the Tribunal to award less than three times the amount of the deposit.

The Respondents have had the Application served on them by Sheriff Officers, and they have neither responded, nor appeared at the Case Management Discussion. This tends to show a disregard for the law and the legal process.

The email sent to the Applicant in response to his enquiry demonstrates knowledge of the Regulations. Being alerted by the Applicant in this manner was an opportunity for the Respondents to realise their error and place the deposit in a Scheme, thereby affording the Applicant the protection the Regulations envisage, and provide them with some mitigation. However, they chose not to do so. The Applicant's deposit remained unprotected for the duration of the tenancy.

The applicant did receive return of his deposit, but not without a struggle. The Respondents had no right whatsoever to attempt to retain any part of the deposit. Adjudication of such matters is one of the purposes of the Regulations.

In all of the foregoing circumstances there is nothing whatsoever to suggest that an order for the maximum sum should not be made.

## 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.

**Alison Kelly**

Legal Member/Chair

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Date

1/4/19