

**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/19/0478**

**Re: Property at 5 Nicol Road, Broxburn, West Lothian, EH52 6JJ ("the  
Property")**

**Parties:**

**Mr Robert Neilson, 108 Manitoba Avenue, Livingston, West Lothian, EH54 6LL  
("the Applicant")**

**Ms Hazel Paterson, 5 Nicol Road, Broxburn, West Lothian, EH52 6JJ ("the  
Respondent")**

**Tribunal Members:**

**Fiona Watson (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined that an order is granted against the Respondent(s) for  
payment to the Applicant in the undernoted sum:**

**TWO THOUSAND THREE HUNDRED AND TWENTY FIVE POUNDS (£2325)  
STERLING**

- **Background**

An application was submitted to the Tribunal under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. Said application sought an order be made against the Respondent on the basis that the Respondent had failed to comply with her duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations").

- The Case Management Discussion

A Case Management Discussion ("CMD") took place on 23 May 2019. Both parties were personally present and representing themselves.

The Applicant sought an order from the Tribunal on the basis that the Respondent had failed to comply with her duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the 2011 Regulations.

He submitted that he had entered into a lease with the Respondent which commenced 22 June 2015. A copy of the lease was lodged with the application. He paid a £775 deposit to the Respondent at the start of the lease. He was given 8 weeks' notice to leave the Property on 11 October 2018. A copy of this notice was lodged with the application. He vacated the Property on or around 20 November 2018. He was unable to find the patio key at the end of the tenancy and the Respondent informed him that he would be responsible for the cost of changing the lock. He asked for a copy of the invoice but this was never received. Only when he asked for the return of his deposit was he advised by the Respondent that she intended to withhold funds to cover rental payments up to 6 December 2018. He had understood that the Respondent had agreed that he could vacate at the earlier date in November 2018. The Respondent confirmed in a text message (a copy of which was lodged with the application) that she did not lodge the deposit into an approved tenancy deposit scheme.

The Respondent advised the Tribunal that her position was that the Applicant was due to pay rent up to the date of termination of lease being 6 December 2018. He was therefore due to pay rent of £325 to cover the period 20 November to 6 December 2018. He was also due to pay the sum of £110 for the costs incurred in having the patio door lock changed. She offered to return the balance of his deposit less those costs and asked him for his bank details for payment, which he didn't provide.

The Respondent advised the Tribunal that her partner worked for Knight Bain, who advertised the property for let. They provided her with a tenancy agreement to use. They did not have any management responsibility for the let, it was advertisement only. She had only let the property out once before, between 2013 and 2015. She was unaware that deposits required to be lodged in a tenancy deposit scheme and only became aware when it was raised by the Applicant after he had vacated the Property. Her previous tenant had her deposit returned to her in full.

The Respondent confirmed that she hadn't read the lease properly before providing it to the Applicant to be signed. She was unaware that there was a clause in the lease in relation to the deposit which specifically provided for the deposit being lodged with Landlord Protection Services Scotland (LPS). The Respondent stated that she did not consider that the Applicant's issue was with her failure to lodge the deposit, and that rather it was with her failure to return the

deposit to him following his departure. She wished her lack of awareness about her obligations to lodge the deposit to be taken into account as a mitigating factor. Upon being asked by the Tribunal as to what steps she took when registering as a landlord and commencing her first let, to familiarise herself with her legal duties and obligations, she confirmed she didn't take any.

- Findings in Fact

The Tribunal made the following findings in fact:

1. The parties entered into an assured tenancy which commenced June 2015;
2. The Applicant paid a deposit of £775 to the Respondent;
3. The Respondent failed to lodge the deposit of £775 into an approved tenancy deposit scheme;
4. The Deposit had not been returned to the Applicant at the time of the CMD.

- Findings in Law

The Tribunal made the following findings in law:

1. The Respondent was in breach of her duties under Regulation 3 of the 2011 Regulations, which states as follows:

*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.*

*(4) In this regulation, the expressions "relevant person" and "unconnected person" have the meanings conferred by section 83(8) of the 2004 Act.*

2. The Tribunal must grant an order in terms of Regulation 10 which states as follows:

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.*

- **Reasons for Decision**

The Tribunal was not satisfied that there were any sufficiently mitigating factors to persuade it to grant an order at a lesser point on the scale than the maximum point allowed, being three times the amount of the deposit.

The 2011 Regulations were introduced to provide security for tenants in paying over deposits to landlords and to address an issue with some landlords taking tenancy deposits and then failing to pay them back where they were lawfully due at the end of the tenancy. The 2011 Regulations also provide that parties have access to an independent and impartial dispute resolution mechanism within a scheme to address any deposit deductions which require to be considered.

By her failure to lodge the deposit into an approved tenancy deposit scheme, the Respondent has deprived the Applicant of the opportunity firstly to have his deposit securely held, and secondly, to have access to an impartial and free arbitration system within a scheme to determine where or not any deductions should be validly made.

The Tribunal found it less than satisfactory that the Respondent had issued a contractual tenancy agreement to the tenant to sign, the terms of which she intended to hold fully enforceable against him, but yet she herself admitted she hadn't in fact read it properly herself and therefore claimed she was unaware of the deposit clause provisions. The Tribunal also found it less than satisfactory that the Respondent's position in this regard appeared to be that the Applicant should have an obligation on him to point this out to her if concerned the lodging of the deposit hadn't been done. The obligations for lodging deposits in terms of the 2011 Regulations entirely lie with the Landlord.

The Tribunal also found it less than satisfactory that the Respondent herself admitted that he had taken no steps to educate herself as to her legal duties and obligations as a landlord. The Tribunal considered that more than sufficient information is readily available, free of cost and the public domain, to ensure that all landlords renting out properties in the private sector are aware of their legal duties. The Tribunal did not consider that the Respondent took her position as Landlord at all seriously, nor her obligations to safeguard her tenant's deposit.

- Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent(s) for payment to the Applicant in the undernoted sum:

TWO THOUSAND THREE HUNDRED AND TWENTY FIVE POUNDS (£2325)  
STERLING

### 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.**

F.Watson

\_\_\_\_\_  
**Legal Member/Chair**

23/5/19  
\_\_\_\_\_  
**Date**