



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

**Chamber Ref: FTS/HPC/PR/19/2447**

**Re: Property at 4 Broadford Terrace, Greenock, PA16 0UQ (“the Property”)**

**Parties:**

**Miss Kirsty Stewart, Flat 1/1, 23 Shore Street, Gourock, PA19 1RQ (“the Applicant”)**

**Mr George Mitchell, 104 Forsyth Street, Greenock, PA16 8RE (“the Respondent”)**

**Tribunal Members:**

**Alan Strain (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the sum of £1,575 to the Applicant.**

**Background**

This is an application under Regulation 9 of the Regulations and Rule 103 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Rules)*. The Applicant seeks an award in respect of the Respondent’s alleged failure to protect her tenancy deposit.

The Tribunal had regard to the following documents:

1. Application received 6 August 2019;
2. Tenancy Agreement (TA) commencing 1 September 2012;
3. Confirmation from Tenancy Deposit Protection Schemes that no deposit held;
4. Previous CMD Notes x 2;
5. Report from Millar Surveying Services dated 22 August 2019;
6. Statement of Mrs Stewart;

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## 7. TA with signatures.

### Hearing

The Applicant was present and represented herself. The Respondent was also present and represented himself.

At the outset the Applicant stated that she had 2 Productions she wished to lodge. The first was a signed TA and the second a handwritten Statement from her mother. The Respondent objected to these being lodged so late. The Tribunal allowed them in accordance with the overriding objective due to the fact that the TA had been lodged with the application (albeit unsigned) and the Applicant's mother was going to attend and speak to her statement.

Both parties had witnesses. For the Applicant, her mother and her Partner Mr Houghton. The Respondent identified two witnesses to speak to the fact that he never took deposits from tenants. He advised the Tribunal that he had 10 other Properties which he let and he never took a deposit.

The Tribunal queried the need for the Respondent's witnesses given that whether or not he took deposits from other tenants was not disputed.

The Respondent did not lead these witnesses.

The Tribunal confirmed with the Parties that the issues for consideration were:

1. Whether or not the Applicant paid a deposit of £525 to the Respondent;
2. If she had, what sanction if any was fair, proportionate and reasonable in respect of the Respondent's failure to protect the deposit.

The Hearing then commenced with the Parties giving their evidence.

The Applicant's position was that she paid the deposit of £525 at the Property following commencement of the TA on 7 September 2012. She had paid the first month's rent and the Deposit in cash. The cash was in an envelope. The Respondent had requested this. She handed the envelope with the cash over to the Respondent in front of her mother, Partner and the Respondent's sister. She had asked for a receipt as she had borrowed the money from her gran. The Respondent didn't have a receipt book so the Respondent had signed the last page of the TA acknowledging receipt. She referred to the version of the TA lodged at the start of the Hearing to that effect. It was also signed by both parties on each page.

The Deposit was never protected and never returned to the Applicant.

The TA ended between 31 May and 11 June 2019. This was agreed.

The Applicant's mother confirmed that she had seen the Applicant hand over the cash and that the amount was £1,050. She confirmed that the Applicant had asked for a receipt. She thought that the Applicant's partner was elsewhere in the Property at the point the cash was handed over.

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Mr Houghton then gave his evidence which was to the effect that he had witnessed the cash (including the deposit) being handed over to the Respondent in the Property on 7 September.

The Respondent was afforded the opportunity to cross examine the Applicant and her witnesses – which he did.

The Respondent gave his evidence to the effect that he never received a deposit. He did not take deposits from tenants. He was handed over £525 cash on 7 September in the Property. He had not signed the TA acknowledging receipt. The Signature to that effect on the last page of the TA was not his. He accepted that the TA had been signed on each page by him after questioning from the Tribunal. The Tribunal also referred him to the version of the TA lodged which had been registered with the Local Authority for Housing Benefit purposes. It showed both signatures on each page.

The Respondent maintained that he had not signed the last page and had not received a deposit.

He also disputed that the Applicant's mother and partner were present when the cash was handed over.

Under questioning from the Tribunal the Respondent asserted first, that the TA was a template and the deposit requirement had been in the template. It wasn't his intention to take a deposit. When the Tribunal enquired why the figure of £525 had been used for the deposit the Respondent accepted that he must have typed that in and that the rental figures for his properties varied.

The Respondent is an experienced Landlord with 10 Properties and over 18 years' experience. He had no knowledge of the Regulations regarding deposits until this matter arose.

From the evidence the Tribunal made the following findings in fact:

1. The Parties entered into the TA commencing 1 September 2012;
2. Clause 12 of the TA required a deposit of £525 to be paid to the Respondent;
3. The Applicant paid a deposit of £525.00 to the Respondent in cash on 7 September 2012 in the Property;
4. The Respondent signed a receipt on the last page of the TA;
5. The deposit was not protected in an approved scheme for the duration of the tenancy;
6. The tenancy ended between 31 May and 11 June 2019;
7. The Applicant did not receive any of her deposit from the Respondent;
8. The Respondent was an experienced landlord with 10 other Properties that he let;
9. The Respondent had been letting Properties for over 18 years;
10. The Respondent was aware of the requirement to protect the deposit.

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The Tribunal did not accept the evidence of the Respondent. His demeanour and the way he presented his evidence led the Tribunal to conclude that his evidence was neither credible nor reliable. The Respondent would have the Tribunal believe that the TA which required a deposit specifically of £525 was simply a template that he used for all his tenancies. The Tribunal did not accept this. He had to apply his mind to the template and specifically type in the figure for the deposit. His attention would have been drawn to that. The Tribunal formed the view that the Respondent was not telling the truth.

The Respondent did not carry a receipt book (on his evidence) despite receiving payments in cash. This cast further doubt on the veracity of his evidence that he had not received a deposit or signed a receipt.

The Applicant's mother and Partner had both witnessed the handing over of the cash. Mrs Stewart spoke to the request for and attainment of the receipt. The Tribunal accepted their evidence which was given in a straightforward and credible manner. Mrs Stewart did not remember Mr Houghton being present at the time of the cash handover. This simply reinforced the Tribunal's view that Mrs Stewart and Mr Houghton were telling the truth. With the passage of time people's memories fade.

The Tribunal did not accept the Respondent's evidence that he was unaware of the Regulations and the requirement to protect the deposit. He was an experienced landlord with 10 Properties and over 18 years in business letting property. The Tribunal formed the view that the Respondent was not telling the truth. The Tribunal were satisfied that he had requested and received the deposit on 7 September 2012, signed a receipt and then sought to deny receipt before the Tribunal. He was trying to avoid the imposition of a sanction from the Tribunal.

The Tribunal considered and adopted the approach in *Russell-Smith and Others v Uchegbu [2016] SC EDIN 64*. The Tribunal had to consider what was a fair, proportionate and just sanction against the Respondent in the circumstances of the case and having regard to the purpose of the Regulations and gravity of the breach. Each case will depend upon its own facts and in the end of the day the exercise by the Tribunal of its judicial discretion is a balancing exercise.

The Tribunal weighed all the factors and found it to be of significance that the Deposit had been unprotected for the duration of the tenancy; the Deposit had not been repaid; the Respondent was an experienced landlord who let 10 other Properties and had been letting Properties for 18 years; the Respondent had sought to evade responsibility for failing to protect the deposit, denied receipt and put the Applicant to the time and trouble of pursuing the matter to Tribunal.

The Tribunal took a dim view of the Respondent's conduct and found the breach was to the upper end of the scale. The Tribunal awarded the sum of £1,575 to be paid by the Respondent to the Applicant.

### **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

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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.

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16 December 2019

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Legal Member/Chair

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Date