

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)  
Act 2014**

**Chamber Ref: FTS/HPC/PR/23/4058**

**Re: Property at 17G Kyle Road, Cumbernauld, Glasgow, G67 2DX (“the  
Property”)**

**Parties:**

**Miss Joy Ahairwe, Flat 2-9, 45 Arlington Street, Glasgow, G3 6DT (“the  
Applicant”)**

**Mr John Burns, previously of 37 Calderpark Road, Uddingston, Glasgow, G71  
7RG and whose current whereabouts are unknown. (“the Respondent”)**

**Tribunal Member: Shirley Evans (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the Respondent failed to comply with his duty as a  
Landlord in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland)  
Regulations 2011 (“the 2011 Regulations”) as amended by The Housing  
(Scotland) Act 2014 (Consequential Provisions) Order 2017 by failing to pay the  
Applicant’s Tenancy Deposit to the scheme administrator of an Approved  
Tenancy Deposit Scheme, grants an Order against the Respondent for payment  
to the Applicant of the sum of ONE THOUSAND FIVE HUNDRED POUNDS (£1500)  
STERLING.**

**Background**

1. This is an application dated 15 November 2023 for an order for payment for where it is alleged the Respondent has not paid a deposit into an approved scheme under the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Application is made under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The Application was accompanied by a copy of a Minute of Let between Letting Agents, Beechwood Housing and the Applicant, an excerpt from Landlord Registration showing the Respondent as being the registered landlord of the Property, an email from My Deposits Scotland dated 27 September 2023, an email from Letting Protection Scotland dated 20 September 2023, an email from Safe Deposits Scotland dated 20 September 2023, an email dated 28 July 2023 from the Applicant addressed to the Respondent and sent to Beechwood Housing, an email dated 29 July 2023 sent from Beechwood Housing's email address but signed off as Merkland Residential, an email from Beechwood Housing to the Applicant dated 24 August 2023 and an email from the Applicant's representative, Govan Law Centre addressed to Beechwood Housing dated 24 August 2024.
3. On 16 November 2023, the Tribunal accepted the Application under Rule 9 of the 2017 Regulations.
4. On 7 December 2023 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 1 February 2024. The Respondent required to lodge written submissions by 28 December 2023. Sheriff Officers reported that they were unable to serve this paperwork on the Respondent. Accordingly, on 5 January 2024 intimation of the CMD on the Respondent proceeded by way of advertisement on the Tribunal website in terms of Rule 6A of the 2017 Regulations. On 5 January 2024 the Tribunal also emailed Beechwood Housing to advise that the application would proceed to be intimated by "Service By Advertisement" and that a public notice was available on the Tribunal website.
5. No response to the application was received from either Beechwood Housing or the Respondent.
6. On 25 January 2024 the Applicant's representative sent written submissions in support of the application.

### **Case Management Discussion**

7. The Tribunal proceeded with the CMD on 1 February 2024 by way of teleconference. Ms Brooks from Govan Law Centre appeared for the Applicant. There was no appearance by or on behalf of the Respondent despite the CMD starting 5 minutes late to allow him time to join. The Tribunal was satisfied that the CMD had been intimated on him in terms of Rule 6A of the 2017 Regulations and accordingly proceeded in his absence.
8. The Tribunal had before it a copy of the application with the written submissions lodged in support, a copy of the Minute of Let between Beechwood Housing and the Applicant, an excerpt from Landlord Registration showing the Respondent as being the registered landlord of the Property, an

email from My Deposits Scotland dated 27 September 2023, an email from Letting Protection Scotland dated 20 September 2023, an email from Safe Deposits Scotland dated 20 September 2023, an email dated 28 July 2023 from the Applicant addressed to the Respondent and sent to Beechwood Housing, an email dated 29 July 2023 sent from Beechwood Housing's email address but signed off as Merkland Residential, an email from Beechwood Housing to the Applicant dated 24 August 2023, and email from Govan Law Centre addressed to Beechwood Housing dated 24 August 2024.

9. Ms Brooks submitted she was seeking £1500 due to the Respondent's failure to lodge the Applicant's deposit of £500 with an approved deposit scheme administrator. The Tribunal noted the emails from the three scheme administrators that confirmed none of them had any record of having received the Applicant's deposit for the Property.
10. As a preliminary matter, she referred the Tribunal to the excerpt from Landlord Registration which showed the Respondent was the registered landlord of the Property. She submitted the Respondent was the relevant party to the proceedings, being the registered landlord.
11. She referred the Tribunal to the Minute of Let and submitted that it was a Private Residential Tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016. The Minute of Let was dated 17 February 2019 and contained erroneous and misleading information. It failed to provide contact details for the landlord, but notes it is between Letting Agents, 'Beechwood Housing' and the Tenant. The only contact details provided for Beechwood Housing was an email address. Further the Minute of Let referred to a fixed term of six months which is not applicable to Private Residential tenancies. Furthermore she referred the Tribunal to the last page of the Minute of Let which stated the following in fine print: *"Landlord deposit and Government holding scheme. As Beechwood Housing are letting agents and not acting as landlords, we are not required under the Local Government Act to register for this scheme. The indemnity payment is at no time considered a deposit."*
12. Ms Brooks referred to her written submissions and referred the Tribunal to the Minute of Let which provides that the Applicant was to pay a deposit of £500.00. The contractual monthly rent was £425.00. She submitted the deposit was paid in full by the Applicant on 17 February 2019. This comprised of a security payment of £100 and an additional payment of £400. The full payment is noted in the Minute of Let which is dated 17 February 2019. This was a deposit which should have been protected under the 2011 Regulations. The Applicant was notified by the three scheme administrators that her deposit was not protected. Ms Brooks confirmed the tenancy had terminated on 26 August 2023. The deposit had never been protected for the duration of the tenancy. This was a significant breach of the 2011 Regulations.

### **Findings in Fact**

13. The Applicant entered into a Minute of Let for a tenancy of the Property with letting agents Beechwood Property on 17 February 2019.
14. The Respondent is the registered Landlord of the Property.
15. The Applicant paid a total of £500 being a holding deposit and security payment on 17 February 2019.
16. The tenancy terminated on 26 August 2023.

### **Findings in Fact and in Law**

17. The Minute of Let is a Private Residential Tenancy Agreement in terms of Section 1 of the Private Housing (Tenancies) (Scotland) Act 2016. It is a relevant tenancy in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
18. The security and holding deposit totalling £500 paid by the Applicant is a deposit as defined by section 120(1) of the Housing (Scotland) Act 2006.
19. The Respondent is a relevant person in terms of Section 83(8) of the Antisocial Behaviour etc (Scotland) Act 2004 and as such had an obligation to comply with the Tenancy Deposit Schemes (Scotland) Regulations 2011.
20. The Respondent failed to pay the deposit into an approved scheme in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations and is in breach of Regulation 3. The tenancy deposit was unprotected throughout the whole of the tenancy.

### **Reasons for decision**

21. For the purpose of Regulation 9(2) of the 2011 Regulations an application where a landlord has not paid a deposit into a scheme administrator must be made within three months of the tenancy ending. The Tribunal found that the application was made in time, the tenancy having terminated on 26 August 2023 and application being made on 15 November 2023.
22. Regulation 3 (1) and (2) of the 2011 Regulations provides –  
  
*“(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.*

23. The tenancy in this case was a “relevant tenancy” for the purposes of the Regulations. The Minute to Let was entered into on 17 February 2019 and is accordingly a Private Residential tenancy.

24. A tenancy deposit is defined in section 120 of the Housing (Scotland) Act 2006 as:

*“ a sum of money held as security for—*

*(a) the performance of any of the occupant's obligations arising under or in connection with a tenancy or an occupancy arrangement, or*

*(b) the discharge of any of the occupant's liabilities which so arise”.*

It is clear to the Tribunal that the sum of £500 paid by the Applicant on 17 February 2019 was a deposit which should have been protected under Regulation 3 of the 2011 Regulations by the Respondent as the registered landlord and relevant person. It was however never protected throughout the whole of the tenancy.

25. The 2011 Regulations were intended, amongst other things to put a landlord and a tenant on equal footing with regard to any tenancy deposit and to provide a mechanism for resolving any dispute between them with regard to the return of the deposit to the landlord or tenant or divided between both, at the termination of a tenancy. They were designed to prevent any perceived “mischief” by giving a landlord control over the return of the deposit at the termination of a tenancy.

26. The amount to be paid to the Applicant is not said to refer to any loss suffered by the Applicant. Accordingly, any amount awarded by the Tribunal in such an application cannot be said to be compensatory. The Tribunal in assessing the sanction level has to impose a fair, proportionate and just sanction in the circumstances, taking into account both aggravating and mitigating circumstances, having regard to the purpose of the 2011 Regulations and the gravity of the breach. The Regulations do not distinguish between a professional and non-professional landlord such as the Respondent. The obligation is absolute on the landlord to pay the deposit into an Approved Scheme.

27. In assessing the amount awarded, the Tribunal has discretion to make an award of up to three times the amount of the deposit, in terms of Regulation 10 of the 2011 Regulations.

28. The Tribunal considered the Respondent had tried to hide his identity behind letting agents, Beechwood Housing. The tenancy was opaque and misleading. It appeared to the Tribunal that the tenancy agreement was drafted in such a way in an attempt to avoid the legislation designed to protect tenants from unscrupulous landlords. The reference to the Local Government Act is simply wrong. It has no application in Scotland. The Respondent had attempted to defeat the purpose of the 2011 Regulations by his failure to comply with his duties under Regulation 3. The tenancy deposit was clearly unprotected throughout the whole of the tenancy. The Tribunal accepted Ms Brooks' submission that this was a substantial breach.

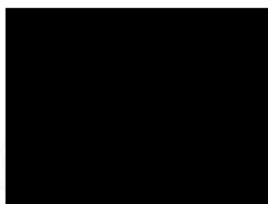
29. In all the circumstances the Tribunal considered that a fair, proportionate, and just amount to be paid to the Applicant by way of sanction was three times the amount of the unprotected deposit.

### **Decision**

30. The Tribunal accordingly made an Order for Payment by the Respondent to the Applicant of £1500.

### **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.**



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**Legal Member**

**6 February 2024**

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**Date**

