



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

**Chamber Ref: FTS/HPC/PR/23/4687**

**Re: Property at 17 St Annes Avenue, Lasswade, EH18 1DT (“the Property”)**

**Parties:**

**Ms Lindsay MacGregor, 137 Waverley Crescent, Bonnyrigg, EH19 3BP (“the Applicant”)**

**Mr Ian Blair, 7 Glen View, Glen Road, Maghaberry, BT67 0AP (“the Respondent”)**

**Tribunal Members:**

**Jim Bauld (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should be ordered to make payment to the Applicants of the sum of ONE THOUSAND AND FIVE HUNDRED POUNDS (£1,500)**

**Background**

1. By application dated 18 December 2023 the applicant sought an order in terms of Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”) in respect of an alleged failure by the respondent to comply with those regulations.
2. The application was accepted by the Tribunal and referred for determination by the tribunal.

3. A Case Management Discussion (CMD) took place on 3 April 2024. The applicant attended personally. The respondent was neither present nor represented.
4. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters. The tribunal asked various questions of the applicant with regard to the application.
5. The tribunal explained to the applicant the maximum award which could be made in terms of the 2011 Regulations
6. The tribunal indicated that it would be entitled to utilise the power within regulation 17 of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the tribunal rules”) and that the tribunal could make a final decision at the case management discussion without remitting the matter to a further full hearing.
7. The applicant confirmed that the tenancy had commenced on 30 June 2016, and ended on 1 December 2023
8. She confirmed a deposit of £600 has paid to the landlord on 7 June 2016 prior to the tenancy commencing
9. When the tenancy had ended, she enquired about the return of the deposit. She discovered that it had not been lodged any deposit scheme.
10. She exchanged messages with the landlord via social media and on 11 December 2023, she was advised in a message from the landlord that the deposit would be returned to her, but that the landlord was not able to pay her at the current time and would only be able to pay her when the property was sold.
11. She has had no further contact from the landlord since that date and has been advised by friends who still live in the area of the property that the house has now been sold.
12. She confirmed that the deposit has never been repaid to her and she intends to pursue a separate application with the tribunal seeking repayment of the deposit.
13. She invited the tribunal to make an award in respect of the failure to lodge the deposit at the maximum allowable level. The deposit has been unprotected for the entire period of the tenancy which exceeded seven years and it has still not been paid to her four months after the tenancy has ended.

### **Findings in fact**

14. A tenancy agreement was entered into between the parties which commenced on 30 June 2016

15. A deposit of £600 was taken by the respondent
16. The deposit was never paid into an approved tenancy deposit scheme
17. The tenancy ended on 1 December 2023.
18. The deposit has never been repaid by the respondent to the applicant

## **Decision**

19. This application related to the failure of the Respondent to place a tenancy deposit within an approved tenancy deposit scheme. Landlords have been required since the introduction of the 2011 Regulations to pay tenancy deposits into an approved scheme within 30 working days of the commencement of the tenancy. In this case it was clear that the Landlord had failed to do so. Accordingly he was in breach of the duties contained in Regulation 3 of the 2011 Regulations. Those duties are twofold. There is a requirement to pay the deposit to a scheme administrator and the requirement to provide a Tenant with specified information regarding the tenancy deposit. The Respondent failed in both duties.
20. Regulation 9 of the 2011 Regulations indicates that if a Landlord does not comply with any duty in regulation 3 then the Tribunal must order that a Landlord makes payment to the Tenant of an amount “not exceeding three times the amount of the tenancy deposit”.
21. Accordingly in this case the Tribunal is required to make an order for payment. The only matter to be determined by the Tribunal is the amount of the payment.
22. In this case the Tribunal carefully considered the evidence which had been produced by the applicant. There was clear evidence that the respondent had failed to pay the tenancy deposit into the appropriate scheme for the whole period of the tenancy (a period of over seven years). The deposit has never been lodged in accordance with the requirements of the 2011 Regulations. At the date of the CMD it has still not been repaid to the applicant.
23. The Regulations were introduced to safeguard deposits paid by Tenants. They were introduced against a background of Landlords abusing their position as the holder of deposit moneys. The parliament decided that it should be compulsory to put the deposit outwith the reach of both the

Landlord and the Tenant to ensure that there was a dispute resolution process accessible to both Landlord and Tenant at the end of a tenancy and which placed them on an equal footing. The Regulations make it clear that the orders to be made by Tribunals for failure to comply with the Regulations are a sanction or a penalty

24. In this case, the Respondent was in clear breach of the 2011 Regulations.
25. The tribunal notes that in a recent Upper Tribunal decision, (*Ahmed v Russel* UTS/AP/22/0021 2023UT07) Sheriff Cruickshank indicates (at Para 38) that **“previous cases have referenced various mitigating or aggravating factors which may be considered relevant. It would be impossible to ascribe an exhaustive list. Cases are fact specific and must be determined on such relevant factors as may be present”**. The amount awarded should represent **“a fair and proportionate sanction when all relevant factors have been appropriately balanced”**.
26. The sanction to be imposed is intended to mark the gravity of the breach which has occurred. It should reflect the level of overall culpability in each case measured against the nature and extent of the breach of the 2011 Regulations. The tribunal is required to determine a fair and proportionate sanction based on the facts as recorded.
27. The Tribunal noted that in an earlier Upper Tribunal decision (reference 2019 UK 39 UTS/AP/19/0023) that Sheriff David Bickett sitting on the Upper Tribunal had indicated that it was appropriate for the Tribunal to differentiate between Landlords who have numerous properties and run a business of letting properties as such, and a Landlord who has one property which they own and let out. The Sheriff indicated in the decision that it would be “inappropriate” to impose similar penalties on two such Landlords.
28. In the current application the applicant advised the tribunal that she understood that the respondent was a landlord who had only one property available for rent. However, it was clear that he had been a landlord for a period in excess of at least seven years and the tenancy agreement itself mentions the 2011 Regulations at clause 15..
29. Prior to the jurisdiction to determine these applications becoming part of the jurisdiction of the First-tier Tribunal, the applications were determined in the Sheriff Court. There were numerous Sheriff Court decisions which have been reported.
30. In many of these cases, the Sheriff Courts have indicated that the Regulations were introduced to address what was a perceived mischief and that they will be meaningless if not enforced.
31. In a decision by Sheriff Principal Stephen at Edinburgh Sheriff Court in December 2013, the Sheriff Principal indicated that the court was “entitled to impose any penalty including the maximum to promote compliance with

Regulations". (*Stuart Russell and Laura Clark v. Samdup Tenzin 2014 Hous.L.R. 17*)

32. In this case, the Respondent was in clear and blatant breach of the 2011 Regulations. The tribunal considered whether it should make an award at the maximum range. The respondent had not attended the CMD and had failed to provide any representations setting out any mitigation of his failure to lodge the deposit in accordance with the Regulations.
33. The tribunal accordingly considered that this was a significant breach of the regulations which required to attract a penalty towards the higher end of the available range. No proper explanation or mitigation had been offered to the tribunal by the landlord. It appeared he had simply and deliberately ignored the provisions of the Regulations.
34. The tribunal considered whether the award should be made at the maximum level available to the tribunal which based on the deposit being £600 would have been £1,800. The tribunal took the view that this case involves an egregious failure by the landlord, compounded by the ongoing failure to repay the deposit some four months after the termination of the tenancy. In the absence of any mitigating factors, the award requires to be at a significant level.
35. Having considered the submissions from the applicants and taking into account the guidance from Upper Tribunal cases, the tribunal has decided that the appropriate award should be £1,500, reflecting the very serious failure by the landlord in this case
36. The tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

## **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.**

# J Bauld

03/04/2024

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Legal Member/Chair

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Date

