



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

**Chamber Ref: FTS/HPC/PR/23/4226**

**Re: Property at 40 Campbell Street, Glasgow, G20 0PD (“the Property”)**

**Parties:**

**Mrs Eszter Vassne Molnar, Mr Robert Vass, 50/4 Stark Avenue, Clydebank, G81 6EE (“the Applicant”)**

**Mr Jojoy Joseph, 50 Mossbank Drive, Glasgow, G33 1LS (“the Respondent”)**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member) and Gordon Laurie (Ordinary Member)**

**Decision**

**[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) made an award in terms of Regulation 10 of the Regulations ordering that the Respondent pay the Applicants the sum of £2,500.00 being an amount equal to two times the value of the relevant tenancy deposit.**

**Background**

[2] The Applicants seek an award under the Regulations in respect of the failure of the Respondent to place a tenancy deposit in an approved scheme as required by Regulation 3. The Respondent had submitted representations acknowledging the breach and putting forward some background information which he wished the Tribunal to consider. The Application had called for a Case Management Discussion and then been continued to an evidential Hearing for evidence to be heard and a final decision made.

## The Hearing

[3] The Application called for a Hearing by conference call at 10 am on 25 June 2024. The Second Applicant, Mr Vass was personally present and confirmed that he would also be representing the interests of the First Applicant who was his wife and who would not be attending. The Respondent was personally present. Neither party had any preliminary matters to raise. The Tribunal began hearing evidence from Mr Vass. The Tribunal then heard evidence from the Respondent. Each party had the right to cross-examine the other and following on from the conclusion of evidence, each party had the opportunity to make closing submissions. The Tribunal also asked questions throughout to ensure that it understood the evidence given.

[4] The Tribunal comments on the evidence heard as follows.

*Mr Robert Vass*

[5] Mr Vass gave evidence in a straightforward manner. The Applicants moved into the Property in April 2022. They paid a deposit of £1,250.00. When the Applicants moved out on 15 October 2023 they expected to receive their deposit back at that point. They were told by the Respondent that they would receive it back at a later stage. On 3 November 2023, Mr Vass emailed the Respondent and asked about whether the deposit had been registered in an approved scheme as required by the Regulations. The Respondent replied saying: *"I never deposited right, I kept it private due to tax related issues"*. Eventually the Respondent returned the Applicants' deposit in full on 8 November 2023. The Applicants had suffered some inconvenience as they had hoped that they would receive their deposit back on the day they moved out. They had intended to use the deposit to cover their moving costs. Instead they had to borrow money from a friend.

[6] The Tribunal found no reason not to take Mr Vass' evidence at face value. It was also fully corroborated by the documentation which was before the Tribunal.

*Mr Jojy Joseph*

[7] The Respondent's evidence was that he was not aware of the Regulations. He admitted using the deposit money for his own purposes. He stated that he had used the deposit to decorate the Property although this was disputed by the Mr Vass. It was also inconsistent with the Respondent's text message to Mr Vass of 3 November 2023 that said: *"I never deposited right, I kept it private due to tax related issues."* The Respondent appeared to claim now in his evidence that this message was a 'typo'. The Respondent's evidence was shaky and unconvincing. The above message was also not consistent with the notion that the Respondent was unaware of the Regulations. It could be construed as demonstrating a positive choice not to comply with the Regulations. The Tenancy Agreement itself also included at Condition 3.2 a clear reference to the Regulations and

the requirement to lodge it with an approved scheme. The Tribunal found it very hard to rely on the Respondent's evidence as being credible and reliable. The Respondent also acknowledged that he had done little to educate himself about his legal responsibilities as a landlord. Mr Joseph appeared to have attached almost no importance to his professional obligations as a landlord. Even the tenancy agreement he had used described itself as being a Short Assured Tenancy, long after the creation of such tenancies had been made incompetent by the Private Housing (Tenancies) (Scotland) Act 2016. The Tribunal found no real mitigation in the Respondent's evidence.

[8] Having heard from parties, the Tribunal made the following findings in fact.

### **Findings in Fact**

- 1. The parties entered into a tenancy agreement whereby the Respondent let the Property to the Applicants which commenced on 29 April 2022;*
- 2. The Applicants paid the Respondent a deposit of £1,250.00;*
- 3. The Applicants moved out of the Property on 15 October 2023;*
- 4. On 3 November 2023, Mr Vass emailed the Respondent and asked about whether the deposit had been registered in an approved scheme as required by the Regulations;*
- 5. The Respondent replied saying: "I never deposited right, I kept it private due to tax related issues";*
- 6. The Respondent returned the Applicants' deposit in full on 8 November 2023;*
- 7. The Respondent failed to comply with Regulation 3 by failing to pay the deposit paid by the Applicants into an approved tenancy deposit scheme within 30 working days of the commencement of the tenancy.*

### **Reasons for Decision**

[9] Having made the above findings in fact, the Tribunal had to determine what, if any, award ought to be made under Regulation 10. The Tribunal proceeded on the basis that the determination of the award required the Tribunal to exercise its judicial discretion to consider what would be fair, proportionate and just having regard to all the circumstances of the case.

[10] The Tribunal took into account the substantial period of time over which the deposit was unprotected. The Tribunal also considered the Respondent to have been overly

casual in his approach to his legal obligations as a landlord. Whilst the Tribunal noted that the Respondent had returned the deposit to the Applicants around three weeks after the end of the tenancy, the Respondent had used the deposit money as his own and for his own purposes. His evidence to the Tribunal was not consistent with his contemporaneous message in which he claimed it was not registered for “*tax reasons.*” The Tribunal was also in substantial doubt about whether the Respondent was being honest when he said he wasn’t aware of the Regulations. The Tribunal considered that an award should be made which reflected the breach as neither being at the highest nor lowest end of the scale of sanctions open to the Tribunal, but rather at a middle level.

[11] The Tribunal therefore ordered the Respondent to pay the Applicants the sum of £2,500.00, being an amount equal to two times the value of the relevant tenancy deposit and which represents an award at the middle range of the scale in keeping with the Tribunal’s assessment of the severity of the breach.

### **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.**

# A. McLaughlin

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Legal Member/Chair

**25 June 2024**

Date