

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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

**Chamber Ref: FTS/HPC/PR/19/2730**

**Re: Property at 2/2 23 St Mungo Avenue, Glasgow, G4 0PG ("the Property")**

**Parties:**

**Miss Patricia Gonzalez Bort, 11/6 421 Davaar Cadzow Street, Glasgow, G2 7PB ("the Applicant")**

**Mr Amjad Mirza, 254 Smithycroft Road, Glasgow, G33 2QZ ("the Respondent")**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Janine Green (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment in the sum of £1725 should be made in favour of the Applicant.**

**Background**

1. By application dated 27 August 2019 the Applicant applied to the Tribunal for an order in terms of Regulation 10 of the 2011 Regulations. The application states that the Respondent failed to lodge her tenancy deposit in an approved scheme. Documents lodged in support of the application include a copy tenancy agreement, a copy statement from Nationwide dated 9 April 2017 and emails from My Deposit Scotland, Letting Protection Scotland and Safe Deposit Scotland, all stating that no deposit had been lodged in connection with the Applicant's tenancy.
2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 15 November 2019. Both parties were notified that the application would call for a case management discussion ("CMD") on 6 December 2019. Prior to the CMD the Respondent lodged written representations and documents.

3. The application called for a CMD on 6 December 2019. A related application under Chamber reference FTS/HPC/CV/19/2725 ("the payment application") also called. The Applicant did not attend but was represented by Mr Jon Zarate. The Respondent appeared in person. The Legal Member discussed the application with the parties and noted that parties were agreed that there had been a short assured tenancy which started on 1 April 2017. The Applicant and Ms Isabella Corveddu were joint tenants. A deposit of £1150 had been paid from the Applicant's bank account at the start of the lease. At no time had the Respondent lodged this deposit in an approved scheme. The Legal Member noted that the former joint tenant, Ms Corveddu, was not a party to the application. Mr Zarate stated that the tenancy had become a sole tenancy when Ms Corveddu moved out of the property. He had moved in and lived there after this, but no new tenancy agreement was signed. At the conclusion of the CMD both applications were adjourned to a hearing on 17 February 2020 at 10am.
4. Prior to the hearing both parties lodged further documents and written representations. The Respondent also advised the Tribunal that he would be represented by Apex Services. The Applicant made a request to participate in the hearing by conference call as she now lives in Australia. This request was granted by the Tribunal.

### **The Hearing**

5. The application called for a hearing on 17 February 2020. The Applicant participated by telephone conference call. She was represented by Mr Zarate. The Respondent attended and was represented by Mr Satair of Apex Services. The payment application also called for a hearing.
6. As a preliminary matter the Tribunal discussed the former joint tenant. It was noted that there was some dispute as to the joint tenant's status at the end of the tenancy. The Respondent maintained that she had been a tenant of the property until the tenancy ended in September 2019. The Applicant stated that she had vacated the property some time before and her room taken by Mr Zarate. The Applicant was told that a new tenancy agreement was not required and that the lease would continue in her sole name. The Tribunal noted that the former joint tenant is not a party to the application. Both parties confirmed that they have had no recent contact from her. The Tribunal noted that the Applicant was one of the tenants of the property in terms of the short assured tenancy agreement. The Tribunal was therefore satisfied that the Applicant was been entitled to make an application in terms of Rule 103 of the Procedure Rules in her sole name and that the Tribunal could proceed to consider same.
7. The Tribunal noted that the material facts are not in dispute. The Respondent accepts that a deposit of £1150 was received by him and was not placed in an approved scheme. Mr Saitar advised the Tribunal that the Respondent disputes the figure upon which any award against the Respondent should be made. He advised that, although the deposit was paid from the Applicant's

bank account, one half of this had been paid by the joint tenant. Therefore, any award should be based on a deposit of £575 and not £1150. In response to questions by the Tribunal the Applicant confirmed that she had received one half of the deposit from the joint tenant and was unaware whether the joint tenant had ever received her share of the deposit back from the Respondent when she vacated the property, but believed that she had not.

8. The Tribunal proceeded to hear a submission from both parties regarding the application. The Applicant advised the Tribunal that she was seeking an award of three times the full deposit paid. She advised that she had been the lead tenant and all tenancy related matters had been dealt with by her. She said that the Respondent had been renting out the property since 2005. The deposit had been paid by her in March 2017 and for two and a half years had not been secured in an approved scheme. She made reference to other issues with the landlord including attempts to raise the rent, going into the property without notice and removing her luggage from a communal drying area although her boyfriend (who also lived in the block) had confirmed it could be left there. She advised the Tribunal that a few months before the tenancy ended she asked the Respondent about the lodging of the deposit. He failed to answer her enquiry. She had to make her own enquiries and established it had not been lodged. She concluded that, as she had paid the whole deposit from her account and dealt with all tenancy related issues during the tenancy, she should be awarded a sum of three times the full deposit and the Respondent should not be entitled to benefit from the fact that the joint tenant had not pursued a claim against him. She also advised that at the conclusion of the tenancy, no part of the deposit paid had been returned to her.
9. Mr Saitar advised the Tribunal that the Respondent accepts that he is in breach of the 2011 Regulations and that an award is inevitable. He stated that this should be based on a deposit of £575, as this was the sum paid by the Applicant. He advised that the property has now been re-let and the new deposit has been placed in a scheme. He advised the Tribunal that the Respondent had relied on his former letting agent to take the necessary action and had been let down by them. This was one of the reasons he had taken over the management of the property. He explained that the Respondent had been unaware of his obligations in terms of the 2011 Regulations, although accepted that these place an obligation on a landlord, not a letting agent, to lodge the deposit in a scheme. He advised that the Respondent intends to sell the property when the new tenants vacate the property and will be withdrawing from the residential market. He concluded by saying that the matter had been a learning experience for the Respondent.
10. The Respondent also addressed the Tribunal. He re-iterated that he had not been aware of his obligations. In response to questions from the Tribunal, he confirmed that he had been renting out the property since 2005. He owns other properties, which are commercial leases, as they are let by him to SERCO for asylum seekers. He confirmed that there are other family residential tenancies with which he has some involvement. He told the Tribunal that the former letting agents had dealt with all tenancy related

matters and had failed to take the necessary steps regarding the deposit.

11. The Tribunal referred the Respondent to his written representations dated 20 November 2019, lodged prior to the CMD. In particular the Tribunal noted that the Respondent stated at paragraph 3 "Within a short space of time, approx. 2 weeks into the tenure, complaints originated from other residents in the building consistent of noise, shouting, smoking cannabis and partying late into the night. Tenants were warned about the behaviour and advised that the landlord would not accept any sort of behaviour that would upset the existing elderly neighbours. At this stage I was ready to return the deposit that was not yet placed in a deposit scheme, in order for the property to be returned because the tenants had made me aware that one tenant was possibly leaving and that the tenure might not be honoured. I thought it best to monitor the situation and see what the tenants decide for themselves." The Tribunal noted that this appeared to indicate that the Respondent had chosen not to place the deposit in a scheme just after the start of the tenancy. The Respondent denied this. Thereafter, in response to a question asked by Mr Zarate, the Respondent stated that the former letting agent for the property, OBHI Property had no connection with him. The reason that the address on tenancy related paperwork was the address of a shop owned by him, was that OBHI Property were providing him with a basic service, essentially finding and vetting tenants and dealing with complaints, but that he had always dealt with the other aspects of the management of the tenancy himself from his shop premises.

## **Findings in Fact**

12. The Applicant is a former tenant of the property.
13. The Respondent is the owner and landlord of the property.
14. The tenancy started on 1 April 2017 and ended in September 2019 when the Applicant vacated the property.
15. On the 18 March 2017 the Applicant paid the Respondent the sum of £1150 as a deposit for the lease of the property.
16. The Applicant received the sum of £575 from the former joint tenant of the property, being her share of the deposit.
17. The Respondent did not lodge the deposit of £1150 with an approved tenancy deposit scheme.

## Reasons for Decision

18. The essential facts of the matter are not in dispute. A deposit was paid to the Respondent and was not placed in an approved scheme. Regulation 3 of the 2011 Regulations states "(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;" Regulation 10 states "If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. "The Tribunal is therefore satisfied that the Respondent is in breach of the 2011 Regulations and that an award should be made in favour of the Applicant.
19. The Tribunal proceeded to consider the level of the award. The Tribunal notes that the Respondent received the sum of £1150 as a deposit. However, although this sum was transferred from the Applicant's bank account, the sum actually paid by the Applicant to the Respondent in terms of the deposit was £575, as she was reimbursed for the remainder by the then joint tenant. Having regard to regulation 10 the Tribunal is satisfied that, as the application is in the sole name of the Applicant, who paid the sum of £575, the correct figure for calculation of the award is the sum of £575.
20. The Tribunal notes that the period of time that the deposit was unsecured was substantial. Even when the Applicant made enquiries with the Respondent, no action was taken by him to rectify the position. At the end of the tenancy the deposit was not repaid to the Applicant, leading to the payment application also before the Tribunal.
21. The Tribunal noted the submission on the Respondent's behalf indicated that he had learned from his error and had taken steps to ensure that it did not happen again. However, the Tribunal had concerns regarding the explanation and mitigation offered by the Respondent and on his behalf. The Tribunal noted that the Respondent has been a landlord for many years. He owns other properties and assists with those owned by family members. The Tribunal was not persuaded by the Respondent's claim that he was unaware of the obligations imposed by the 2011 Regulations and had simply been let down by his former letting agent. In his written representations of November 2019, he states that the deposit was not placed in a scheme as he thought the tenancy was going to end very quickly. This contradicts his claim that he didn't know of his obligations regarding the deposit. The tenancy did not end at that time, but the Respondent did not rectify his failure when it became clear that the tenancy was going to continue. The Tribunal also noted a further discrepancy in the Respondent's evidence regarding his former letting agent. Both he and Mr Saitar claimed that they had failed to lodge the deposit on his behalf. However, he later advised that they had only been providing him with a basic "find a tenant" service with most of the management of the property carried out by him. The Tribunal also noted that the Applicant's bank statement appears to show both rent and deposit being paid to the

Respondent himself, not the letting agent. Lastly, the Tribunal noted that although it was claimed that he had learned from his mistake, the Respondent did not demonstrate any regret or remorse for his breach of the Regulations.

- 22.** The Tribunal concluded, having regard to the foregoing, that the award should be based on the Applicant's share of the deposit of £575, but that the maximum award of three times this amount was appropriate.

## **Decision**

- 23.** The Tribunal determined that an award of £1725 should be made in favour of 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 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.

  
Josephine Bonnar  
Josephine Bonnar, Legal Member/Chair

**17 February 2020**