

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Sections 9 and 10 of the Tenancy
Deposit Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/19/3371

Re: Property at 18 Great George Street, Glasgow, G12 8LN (“the Property”)

Parties:

**Mr Muhamad Haziq Afif Bin Muhamad Her, 2/1 35 Crow Road, Glasgow, G11 7RT
 (“the Applicant”)**

**Mr Ahmad Qureshi, whose current whereabouts are unknown (“the
Respondent”)**

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that**

Background

This is an application dated 22nd October 2019 brought in terms of Rule 103 (Application for order for payment where landlord has not paid the deposit into an approved scheme) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The application is made under Regulation 9 of the *Tenancy Deposit Schemes (Scotland) Regulations 2011* (“the 2011 Regulations”).

The Applicant seeks payment of compensation in respect of an alleged failure by the Respondent to pay the deposit he asserts he provided of £400.00 in relation to the tenancy agreement into an approved scheme within 30 days of receipt of that sum.

The Applicant provided with his application copies of a tenancy agreement, e-mail and mobile phone text correspondence between the parties which confirmed on the Landlord's agent's part payment of money by the Applicant "which we withhold for security", bank statements showing the payment of the deposit, and correspondence from the Applicant's agent in respect of the Property (designating himself as "Mo M", and known to the Applicant as "Adam") which stated that "we do not take deposits".

The Respondent could not be validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal, as the Applicant has never been provided with his address.

When sheriff officers attended at the address in Dundee listed for the Respondent in the Register of Landlords to effect service, they met a resident of that property who confirmed that she was a tenant, had never heard of the Respondent, and that her landlord was a completely different individual.

As the Respondent's present whereabouts are unknown, service was validly effected by advertisement in terms of Rule 6A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and the Tribunal was provided with the Certificate of Service by advertisement.

The Case Management Discussion

A Case Management Discussion was held on 6th March 2020 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant appeared, and was accompanied by Mr Smith of Glasgow University SRC Advice Centre. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Applicant explained that after requesting repayment of his full deposit after the end of the tenancy on 28th August 2019, his request was refused.

The Applicant had also checked the Register of Landlords, and found that the Respondent was registered as landlord of the Property, but as earlier noted, the supplied contact address is not one where the Respondent resides or may be contacted at.

The lease agreement purports to be a short assured tenancy agreement which commenced on 1st September 2018. Legally, this form of agreement could no longer be created from 1st December 2017, and accordingly the agreement may be treated as a private residential tenancy agreement.

The Landlord is designed in the agreement as Westend Lets Ltd. That company is dissolved, and it is not clear what relationship it has with the Respondent. The Tribunal noted that its registered office is listed as the Property, which is entered on the Land Register with the Respondent listed as proprietor. In those circumstances, the Tribunal proceeds on the basis that it has some connection with the Respondent.

The Applicant sought payment of compensation in respect of the Respondent's failure to lodge his deposit in an approved scheme.

Reasons for Decision

This application was brought timeously in terms of regulation 9(2) of the 2011 Regulations.

Regulation 3 of the 2011 Regulations (which came into force on 7th March 2011) provides as follows:

“(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.”

The Respondent as landlord was required to pay the deposit into an approved scheme. He failed to do so.

Regulation 10 of the 2011 Regulations provides as follows:

“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; and
(b) may, as the First-tier Tribunal considers appropriate in the circumstances of the application, order the landlord to—
(i) pay the tenancy deposit to an approved scheme; or
(ii) provide the tenant with the information required under regulation 42.”

The Tribunal is satisfied that the Respondent did not comply with his duty under regulation 3, and accordingly it must order the Respondent to pay the Applicant an amount not exceeding three times the amount of the tenancy deposit.

In the case of *Jenson v Fappiano* 2015 G.W.D 4-89, Sheriff Welsh opined in relation to regulation 10 of the 2011 Regulations that there had to be a judicial assay of the nature of the non-compliance in the circumstances of the case and a value attached thereto which sounded in sanction, and that there should be a fair, proportionate and just sanction in the circumstances of the case. With that assessment the Tribunal respectfully agrees.

In the case of *Tenzin v Russell* 2015 Hous. L. R. 11, an Extra Division of the Inner House of the Court of Session confirmed that the amount of any award in respect of regulation 10(a) of the 2011 Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.

In determining what a fair, proportionate and just sanction in the circumstances of this application should be, the Tribunal took account of the fact that the Respondent appears to have failed to comply with important legal obligations incumbent on a landlord.

The Respondent is registered as landlord, but has provided a contact address which is clearly not his. He has failed to lodge the deposit with an approved scheme, in terms of the regulations incumbent upon him. The Applicants have been unable to make contact with him, and he cannot be traced.

The 2011 Regulations have been enacted to provide protection to tenants in respect of their deposit and ensure that they can obtain repayment of their deposit at the conclusion of the lease. The period during which the deposit was not lodged in an approved scheme and during which the Applicant did not have the security provided by such lodging was lengthy (approximately 18 months to today's date).

The Tribunal considered the Respondent's breach to be flagrant, and in these circumstances, the Tribunal considers that the sum of £1,200.00 (three times the amount of the tenancy deposit) is an appropriate sanction to impose.

In terms of regulation 10(b)(i) of the 2011 Regulations, the Tribunal may, if it considers it appropriate in the circumstances of the application, order the landlord to pay the tenancy deposit into an approved scheme.

In the circumstances of this application, the Tribunal considers it appropriate to order the Respondent to pay the tenancy deposit of £400.00 into an approved scheme. Once that has been done, the parties can then utilise the approved scheme dispute resolution mechanism to determine to whom the sums representing the deposit should be repaid, in circumstances where the Applicant understands that the Respondent may be seeking to argue that he may retain some of that sum in respect of damage to the Property, which claim the Applicant disputes.

Decision

For the foregoing reasons, the Tribunal orders the Respondent in respect of his breach of Regulation 3 of the 2011 Regulations:

- (1) to make payment to the Applicant of the sum of £1,200.00 in terms of Regulation 10(a) of the 2011 Regulations; and
- (2) to make payment of the tenancy deposit of £400.00 into an approved scheme in terms of Regulation 10(b)(i) of the 2011 Regulations.

The Tribunal will also report the Respondent's apparent failure to provide his genuine contact details as landlord to the Register of Landlords to the appropriate authorities.

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.

Mr Neil Kinnear

06/03/2020

Legal Member/Chair

Date