

**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 10 of the Tenancy Deposit  
Scheme (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/19/3971**

**Re: Property at 11 Hopetoun Avenue, Bucksburn, Aberdeen, AB21 9QU ("the  
Property")**

**Parties:**

**Mr Ross Senkbeil, Mrs Rebecca Senkbeil, Carrington, Westhill, Aberdeenshire,  
AB32 7BW ("the Applicant")**

**Mr Stanley Reid, Mrs Patricia Reid, 1 Bakersfield Close, Newmachar,  
Aberdeenshire, AB21 0PE ("the Respondent")**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined to make an order for payment against the Respondent in  
the sum of Five Hundred and two pounds Sterling.**

**Background**

- 1 By application dated 10 December 2019 the Applicants sought an order for payment as a result of the Respondents failure to lodge their tenancy deposit in an approved tenancy deposit scheme.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 11 March 2020.

- 3 The application paperwork together with notification of the date, time and location of the Case Management Discussion was served on the Respondents by Sheriff Officers.

### **The Case Management Discussion**

- 4 The Case Management Discussion took place on 11 March 2020 by conference call. The Applicants were both present. Mrs Reid was present and representing her husband who was unwell.
- 5 The Legal Member explained the purpose of the Case Management Discussion. She then explained the purpose of the Tenancy Deposit Scheme (Scotland) Regulations 2011 and advised that the first issue to determine was whether there had been a breach of the landlord's duties to place the deposit in a scheme. The Legal Member noted that it was not in dispute that the deposit had not been put into an approved tenancy deposit scheme. Both the Applicants and Mrs Reid confirmed this to be the case.
- 6 The Legal Member advised that she was therefore in a position to make a finding that there had been a breach of the landlord's duties under the 2011 Regulations, namely Regulation 3. She therefore advised that it would be for the Tribunal to assess what would be appropriate in terms of a sanction payment against the Respondents. The Tribunal had no discretion in this regard, it must make an order where a breach has been found. The Legal Member then heard submissions on this issue from both parties which can be summarised as follows:-
- 6.1 The Applicants explained that they had acted on advice from Shelter in making the application to the Tribunal. They should have had the right to mediation and the independent deposit scheme resolution but this was not available due to their deposit not being in a scheme. The Applicants confirmed that the Respondents had offered to return the deposit to them by cheque but they weren't clear on what that meant in terms of the actual figure they intended to return. They hadn't contacted the Applicants again since they had offered to send the cheque to seek clarification on this point. They hadn't provided the Applicants with a forwarding address as they didn't want to give this out.
- 6.2 Mrs Reid on behalf of the Respondents advised that this had all come as a shock and could have been sorted out if the Applicants had approached her directly. She had spoken to the Applicants and had asked for a forwarding address to send the cheque for the deposit on to. The money was there. Mrs Reid explained it had been a simple oversight, whereby the deposit had been paid to her letting agent but she had then neglected to put it into a scheme. She hadn't been aware of the obligation to do so. It had been an honest mistake. Mrs Reid felt

she had been a good landlord. They had no intention of withholding the deposit, they were only guilty of not lodging it in a scheme. Mrs Reid explained that the Applicants had not responded to any of her calls. She felt she had been unfairly treated by them.

## **Relevant Law**

- 7 The relevant law is contained with the Tenancy Deposit Scheme (Scotland) Regulations 2011 which provide as follows:-

*“3.—(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.*

*(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—*

*(a) in respect of which the landlord is a relevant person; and*

*(b) by virtue of which a house is occupied by an unconnected person,*

*unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.*

*(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.”*

*“9.—(1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.*

*(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.”*

*“10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—*

*(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 sheriff 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.”*

## **Findings in Fact and Law**

- 8 The Applicant and Respondent entered into a tenancy agreement which commenced on 16 January 2018.
- 9 The Applicants paid a deposit of £1004 prior to the commencement of the tenancy.
- 10 The Respondents did not pay the deposit into an approved tenancy deposit scheme.
- 11 The tenancy terminated on 18 December 2018.
- 12 The Respondent is in breach of Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011.

## **Reasons for Decision**

- 13 The Tribunal determined the application having regard to the application paperwork and the verbal submissions at the Case Management Discussion. The Tribunal was satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. The substantive facts were agreed between the parties and there were no issues to be resolved that would require a hearing in the matter.
- 14 It was a matter of agreement between the parties that the deposit had not been paid into an approved tenancy deposit scheme and had remained unprotected throughout the entire term of the tenancy. The Respondents were therefore in breach of Regulation 3. Accordingly having been satisfied that there had been a breach, the Tribunal then had to consider what sanction to impose under Regulation 10 having regard to the particular facts and circumstances of the case.
- 15 The Tribunal considered the requirement to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach. In doing so the Tribunal took into account the fact that the deposit had remained unprotected for the entire term of the tenancy and the Applicants had been denied access to the independent dispute resolution process that would have been available at the end of the tenancy had the deposit been lodged with a tenancy deposit scheme.
- 16 However the Tribunal also accepted the Respondent's account of what had transpired both at the commencement and the termination of the tenancy. The Tribunal found her narration to be credible and she had been candid in

accepting that the breach had occurred. It seemed to be a matter of agreement that the Respondents had offered to return the deposit at the end of the tenancy, however the Applicants had chosen not to provide a forwarding address to facilitate this, instead awaiting the outcome of the present application which is a separate matter to the return of the deposit. The Tribunal accepted that the Respondents did not have any intention to retain the deposit and had made attempts to return it in full. The Tribunal did not therefore consider there to have been any deliberate attempt on the part of the Respondents to circumvent the use of a deposit scheme.

- 17 However as landlords the Respondents had a responsibility to ensure they were fully aware of the duties and obligations incumbent on them as a landlord so that they could comply with same. The Tribunal also noted one of the main objectives of the 2011 Regulations is to ensure deposits are safeguarded throughout the entire term of a tenancy which had not happened in this case. By imposing a sanction, the Regulations seek to actively encourage landlords to comply with the legislation.
- 18 Balancing the competing factors in the particular facts and circumstances of the application, the Tribunal considered that this was not a case that merited an award at the higher end of the scale. The Tribunal accepted that the breach had arisen from a genuine error on the Respondents' part, that there was no malice intended, that the Respondents had been candid in accepting the breach, that they had made attempts to return the deposit to the Applicants timeously and in full, and that remained their intention.
- 19 The Tribunal therefore made an order against the Respondent in the sum of £502, being half of the deposit. The Tribunal considered this to be a fair and proportionate amount having regard to the particular circumstances of this application.
- 20 For the avoidance of doubt the repayment of the deposit remains a separate issue to that determined in the present application and the award of payment made by the Tribunal in this matter is not applicable in any way to the amount of the deposit held.

## **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.**

**Mrs Ruth O'Hare**

**11 March 2020**

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**Legal Member/Chair**

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**Date**