



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 and Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.**

**Chamber Ref: FTS/HPC/PR/18/0174**

**Re: Property at 2/1, 10 Alexandria Gate, Glasgow, G31 3AY (“the Property”)**

**Parties:**

**Mr Gordon Jack, 39 Vesuvius Drive, Motherwell, ML1 2EY (“the Applicant”)**

**Mr Greig Johnstone 22 Hermitage Drive, Dumfries GD12 7QF, (“the Respondent”) represented by Mr Craig Mc Coll of Core Property Management 4 Claremont Place Glasgow G37YR.**

**Tribunal Members:**

**Lesley Ward (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) being satisfied that the Respondent as landlord of the property at 2/1 10 Alexandria Gate, Glasgow, did not comply with any duty in Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011, makes an order for the Respondent to pay to the Applicant the sum of two thousand pounds (£2000).**

This is an application in terms of Rule 103 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 ‘the rules’ for an order for payment where a landlord has not paid the deposit into an approved scheme. The application was made by Mr Gordon Jack on the 23 January 2018. The hearing today was a case management discussion. The applicant attended and was accompanied by his mother Mrs Anne Jack. Mr Craig Mc Coll of Core Property Management attended as the respondent’s representative.

The tribunal had before it the following copy documents:-

1. Application dated 20 January 2018 and received by the tribunal on the 23 January 2018

2. Tenancy agreement dated 25 November 2013.
3. Letter from 1st Class Lets and Sales dated 19 August 2014.
4. Undated letter from Mr Craig Mc Coll of Core Property Management.
5. Copy emails between the application and Core Property Management from 22 September 2017 until 30 November 2017.

Mr Jack gave evidence at the Case Management Discussion. His evidence was that he moved out of the property on 31 October 2017 and had not yet received the return of his £818.13 deposit. Around August 2014 his landlord changed letting agents and he has lodged the letters he received from the outgoing and incoming agents. Mr Jack does not recall receiving the email from the police which is dated 1 October 2014 and which was attached to the most recent email he received from Core Property Management. He understands that there may be an issue regarding the previous letting agent misappropriating the deposit but he does not know why that should affect his landlord returning his deposit. Mr Jack has heard nothing further from his landlord or their agents and accordingly he has made the application in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 'the regulations'. He has not had any communication regarding any deductions made by his landlord from the deposit. Mr Jack lodged a further document at the case management discussion, the respondent's agent having no objection. This was a copy of an email dated 14 November 2013 from 1st Class Lets and Sales which detailed the deposit was £818.13 which represents five and a half weeks rent.

Mr McColl did not dispute any of the applicant's evidence. He agreed that his company had taken over the management of the respondent's property in August 2014. He did not dispute that the deposit was not lodged with an appropriate scheme by the respondent or his previous agents. He agreed that the deposit had not been returned to the applicant. He also agreed that between August 2014 and October 2017 the deposit was not lodged with any approved scheme. His understanding was that there was a police investigation into the previous letting agent and the deposit may have been misappropriated by them. He was unable to account for why the landlord had not taken steps to ensure the deposit was lodged with a scheme after his company became involved. He was also unable to account for why the landlord had not taken steps to return the deposit to the applicant. According to Mr Mc Coll, the landlord is aware of the application but has not instructed Mr Mc Coll to enter into any negotiations with the applicant regarding the deposit. Mr McColl's position was that the applicant was a "model tenant" and there was no need to withhold any of the deposit at the conclusion of the tenancy.

The tribunal heard full evidence from the applicant and the respondent's representative set out the respondent's position fully and asked the applicant some questions by way of clarification. Mr Mc Coll did not seek a full hearing in which the respondent could give evidence to the tribunal of any factors in mitigation. Mr Mc Coll was content for a final decision to be made today.

## Findings in fact

The tribunal is satisfied that the applicant paid a deposit of £818.13 to the respondent in November 2013 as his landlord.

The tribunal is satisfied that the applicant rented the property at 2/1 10 Alexandria Gate Glasgow from Mr Greig Johnstone between November 2013 and October 2017.

The tribunal is satisfied that the deposit was not paid in to a recognised deposit scheme and the landlord did not provide details of the scheme or a statement that he is or has applied to be entered in the register of landlords maintained by the local authority, as required by regulation 42.

The tribunal is satisfied that around August 2014 the respondent became aware that the applicant's deposit had not been lodged in an appropriate scheme.

The tribunal is satisfied that the tenancy came to an end around 31 October 2017.

The tribunal is satisfied that the deposit has not been returned to the applicant by the respondent.

## Reasons

The tribunal considered the terms of the regulations. The tribunal noted that the respondent's previous agents may have failed to lodge the deposit on his behalf and may have failed to account to either the respondent or the applicant for the deposit. In any event, the obligation to lodge the deposit in an appropriate scheme in terms of the regulations is the landlord's obligation, and therefore the respondent's in this application. Regulation 3 provides:-

*A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 days of the beginning of the tenancy, pay the deposit to the scheme administrator of an approved scheme. And provide the tenant with the information required under regulation 42.*

The tribunal reviewed all of the recent cases regarding tenancy deposit schemes and noted that in the case of Kirk-v-Singh sheriff Jamieson states

*The defender, a registered landlord, acted through his agent. Although that ignorance is no excuse, it is a factor to be taken into account in the exercise of my discretion.*

In that case the deposit was returned to the tenant at the end of the tenancy unlike this case.

Sheriff Jamieson in Singh was mindful of the need to:-

*proceed to impose a sanction which is "fair , proportionate and just having regard to the seriousness of the noncompliance.*

The tribunal, having heard all of the available evidence and taking into account the representations made for the respondent is satisfied that the respondent failed to comply with all of his obligations in terms of regulation 3. It appears that the respondent's previous agents may have let him down and that the failure by the respondent may not have been wilful. The respondent was aware that the deposit was not lodged or protected around August 2014 and took no steps to rectify this. The applicant however paid the deposit and kept his end of the tenancy agreement in full. Accordingly the tribunal decided a penalty of £2000 was fair and just in all of the circumstances.

### **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.**

**L Ward**

---

**Lesley Ward Legal Member**

---

**21 March 2018**