

**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 Schemes (Scotland) Regulations 2011.**

**Chamber Ref: FTS/HPC/PR/18/1421**

**Re: Property at 2/3, 427 Hawthorn Street, Glasgow, G22 6EN (“the Property”)**

**Parties:**

**Mr Gerard Anderson, 54/3 St Marys Street, Edinburgh, EH1 1SX (“the Applicant”)**

**Ocean Investments (Scotland) Limited, 24 Fairley Street, Glasgow, G51 2SN (“the Respondent”)**

**Tribunal Members:**

**Lesley Ward (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent as landlords for the property at 2/3 427 Hawthorn Street Glasgow G22 6EN did not comply with any duty in Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011, and makes an order for the Respondent to pay to the Applicant the sum of one thousand three hundred and fifty pounds (£1350).**

This is a case management discussion ‘CMD’ regarding an application in terms of Rule 103 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 “the rules” for a penalty where a landlord has not paid the deposit into an approved scheme in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011, “the regulations”. The application was made by Mr Gerard Anderson on the 7 June 2018. The Applicant attended the CMD. There was no appearance for the Respondent. The tribunal had sight of the sheriff officer’s execution of service dated 18 September 2018 which confirmed that service of the papers and the CMD was effected on 17 September 2018. The tribunal was satisfied

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that appropriate notification had been done in terms of rule 24. The tribunal proceeded to hear the application in terms of rule 29.

The tribunal had before it the following copy documents:

1. Application dated 1 June 2018 and received by the Tribunal on 7 June 2018,
2. Tenancy agreement
3. Email dated 13 March 2018 from letting agent to Applicant.

### **Case management discussion**

The Applicant stated that as referred to in the copy email, the tenancy agreement came to an end on 20 March 2018. There was no notification that the deposit was lodged in an approved scheme and he was not given any information of landlord registration. Before he made the application he made a search and was unable to find the Respondent listed in the register of landlords. He understands that the Respondents have other properties in the same block as the flat he rented from them. After around 8 or 9 telephone calls to the letting agents he received his deposit back less a deduction of £118. This was received around the end of June 2018. The deduction related to property disposed of by the Applicant's flat mate. No negotiation took place regarding the deduction. The Applicant is seeking the full penalty of three times the deposit of £450.

### **Findings in fact**

The tribunal is satisfied that the Applicant paid a deposit of £450 to the Respondent's agents around October 2017 regarding the rental of the property at 2/3 427 Hawthorn Street Glasgow.

The tribunal is satisfied that the deposit was never lodged in an approved deposit scheme and the notifications laid down in Regulation 42 were not carried out.

The tribunal is satisfied that the Respondent failed to comply with any of the duties in Regulation 3.

### **Reasons**

The tribunal is satisfied that a breach of Regulation 3 has occurred and that an order in penalty is appropriate in terms of Regulation 10. The tribunal is satisfied that the Respondent has received notification of the CMD and the tribunal is satisfied that the procedure has been fair and sufficient information is available to the tribunal today to make a decision.

The tribunal considered the gravity of the breach. The lease refers to the deposit schemes and yet the deposit was not lodged. The Respondent has used an agent and appears to have other rental properties. The deposit was left unprotected for the whole of the lease and the Applicant had to chase the letting agent and wait several weeks for the return of part of the deposit. He did not agree to the deduction.

The tribunal reviewed all of the recent cases regarding tenancy deposit schemes. The tribunal is mindful of the need to proceed in a manner that is fair, proportionate and just having regard to the seriousness of the breach (Sheriff Jamieson in Kirk-v-Singh 2015 SLT (Sh Ct) 111) It appears that this is exactly the type of situation that the regulations are designed to avoid. The only mitigating factor is the fact that the Respondent used a letting agent and part of the deposit was eventually returned. The tribunal considered that an award of three times the deposit was fair 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.**

Lesley Ward

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**Lesley A Ward Legal Member/Chair**

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**Date: 3 October 2018**