

**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 Regulations 9 & 10 of the Tenancy  
Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/18/2283**

**Re: Property at 21 Wellington Place, Kirkwood, Coatbridge, ML5 5RH (“the  
Property”)**

**Parties:**

**Mis Lisa-Anne Martin, c/o 30 Highcross Avenue, Old Monkland, Coatbridge,  
ML5 5NZ (“the Applicant”)**

**Coatbridge Citizens Advice Bureau, Unit 10, The Fountain Business Centre,  
Ellis Street, Coatbridge, ML5 3AA (“the Applicant’s Representative”)**

**Mr Joe Traynor, Ms Debbie Traynor (formerly Debbie Hay), Church Street, c/o  
Homelink Estate Agents, 22a Main Street, Coatbridge; 118 Motherwell Street,  
Airdrie, ML6 7EJ (“the Respondents”)**

**Tribunal Members:**

**Susan Christie (Legal Member)**

**Decision**

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

1. The Application for payment of a sum of money under Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) arising out of a failure by the landlord to comply with the duty in Regulation 3 of the Regulations was received by the Tribunal on 29 August 2018. A Notice of Acceptance of the Application by the Tribunal made under Rule 9 of the First-Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 as amended (“the Rules”) is dated 17 September 2018.
2. The Application type is under Chapter 11 Rule 103 of the Rules.

3. On 4 December 2018, the Tribunal sent a letter to the Parties intimating the day, time and venue of the Case Management Discussion and told them they required to attend: 4 December 2018 at 11.30 am within Glasgow Tribunals Centre, Room 111, 20 York Street, Glasgow, G2 8GT. Further detailed information was given as to what could occur then including the making of a decision in absence.
4. The said letter of 4 December 2018 along with the accompanying supporting documentation was served on the Respondent Debbie Traynor on Sixth December 2018 by Sheriff Officers the mode of service being by way of letterbox service.
5. Written representations were made by the Respondents by way of e mail.

### **The Case Management Discussion**

6. The Applicant was in attendance along with her Representative Mr Melvin and the Respondent Mr Joe Traynor was present representing himself and his daughter in law, the second named Respondent.
7. The Application details and the documents in support of the Application were discussed in detail with the Applicant and discussion took place around the lease terms, the Deposit paid and the terms of the Application.
8. The Short Assured Tenancy (SAT) created was between the Parties. It commenced on 10 June 2016 for an initial term of 6 months and recurred by tacit relocation for the same duration thereafter. Ms Hay was the owner landlord and Mr Traynor managed it also as a landlord.
9. A Deposit was paid over of £550 at the outset in addition to advance rent and a receipt was given.
10. The tenant continued to live there thereafter on exactly the same terms and conditions and paid the same rent until a fire occurred in an adjoining property causing significant damage to this Property in June 2018. On 4 June 2018 the Property was no longer habitable and the full deposit of £550 was repaid to the Applicant by the Respondents along with £375 which it was agreed was also due by way of unused rent.
11. The deposit paid of £550 should have been paid into an approved scheme but it was not. The SAT at page 17 referred to the scheme and to the Letting Protection Service Scotland but that page implied no deposit was taken, which was at odds with what was fact.
12. No request had been made to the landlord for evidence that the deposit had been placed in an appropriate scheme. Both parties stated that they were not familiar with the requirements. The Landlord had engaged an agent to prepare the paperwork, Home Link. Mr Traynor was diagnosed with cancer around the time of the Property being let out and even though he stated he did not know about the legal requirements explained that in any event his thoughts were elsewhere. In addition, he was unhappy that it had initially been alleged that the Deposit had not been repaid when it had been repaid swiftly after the fire before even an inspection. He had raised this, and the Applicant's

Representative confirmed on reflection that the payment had been made.

13. The Applicant had recovered the deposit sum of £550. Her Representative sought compensation for the failure to pay the Deposit into an approved scheme at the discretion of the Tribunal. Reference was made to the reference in the tenancy to the scheme. His reading of page 17 and page 5 was that the agent employed expected Mr Traynor to place it in a scheme. He had provided the Applicant with advice regarding this and other matters after the fire.

### **Findings in Fact**

- I. The parties entered into a Short Assured Tenancy which commenced on 10 June 2016 for an initial term of 6 months and tacitly recurred thereafter. It ended around 4 June 2018 by agreement. It is a relevant tenancy as defined in Regulation 3 of the Regulations.
- II. A deposit was paid of £550 by the Applicant to the Respondents.
- III. The Respondents did not pay the deposit to the scheme administrator of an approved scheme within 30 working days of the tenancy beginning.
- IV. The deposit was never paid into an approved scheme.
- V. The deposit was repaid to the Applicant by the Respondents on 4 June 2018.

### **Findings in Fact and law**

- VI. The Respondents being the landlord did not comply with Regulation 3 of the Regulations and are in breach of the Regulations.
- VII. The Respondents are required to pay the tenant Applicant a sum of money and the Tribunal must make an order to that effect by Regulation 10.
- VIII. The Respondent is ordered to pay the Applicant the sum of £400.

### **Reasons for Decision & Decision**

The Application is well founded. A deposit was clearly paid at the outset of the tenancy and not deposited in an approved scheme. The purpose of Regulation 10 is to impose a *sanction* on the landlord for the failure and non-compliance with the statutory scheme. Ultimately the tenant recovered the deposit of £550 but was exposed to a lengthy period during which her deposit could have been at risk. In the circumstances of this Application I order the Respondent to pay the Applicant £400. This sum is less than the deposit. I could have imposed a higher sum to an amount not exceeding three times the amount of the tenancy deposit, but I considered the various undisputed timeline and facts and that whilst the deposit was at risk, the deposit was returned to the Applicant. I did consider that the landlord should have known about the legal obligations around the lodging of a Deposit particularly where

reference had been made to it on page 17 of the lease. I was aware that Mr Traynor's mind had been distracted due to his diagnosis. There were two Respondents and an agent involved from the outset of the lease. I considered that £400 was reasonable in all of the circumstances exercising my discretion.

### **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.**

S Christie

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**Legal Member/Chair**

**4 January 2019**  
**Date**