

**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/18/3081**

**Re: Property at 60 Montrose Drive, Aberdeen, AB10 7BX ("the Property")**

**Parties:**

**Miss Lara Macpherson, 16 Fraser Drive, Westhill, Aberdeenshire, AB32 6FA ("the Applicant")**

**Mr Fraser Mitchell, 41 Polo Park, Stoneywood, Aberdeen, AB21 9JW ("the Respondent")**

**Tribunal Members:**

**Petra Hennig-McFatrige (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment by the Respondent to the Applicant of £400 in terms of Regulation 10 (a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (the Regulations) .**

**Background:**

The Applicant made the application on 13 November 2018 and asked for an order of 3x the deposit of £400 and an order to the Respondent to lodge the deposit with a Deposit Scheme. She included a copy of a tenancy agreement starting 20 May 2018, a letter dated 17 September 2018 to the Respondent requesting the information in terms of Regulation 42 of the Regulations and authorisation for her representative Mr McDonald. A case management discussion (CMD) was fixed for 23 January 2019. The documentation and notification of the CMD were intimated to the Respondent by Sheriff Officers on 7 January 2019. The Respondent emailed the Tribunal advising he would likely be abroad but lodge a statement with his position, which he did by email on 19 January 2019. This was forwarded to the Applicant. There was no request for a postponement of the CMD and both parties had been advised in the correspondence that the Tribunal may do anything at a CMD which it may do at a hearing, including making a decision.

## **The Case Management Discussion**

The Applicant attended with her representative Mr McDonald. The Respondent did not attend. The Applicant advised the Tribunal that the deposit had now been lodged with SafeDepositsScotland on 11 January 2019 and that therefor there is no further need for an order to lodge the deposit. She did not dispute the statements in the email from the Respondent regarding his absence and being a registered landlord or being a member of the deposit scheme since 2017 and explained that whilst there were issues regarding Utility bills these could now be addressed through the appropriate release mechanism of the deposit scheme, which had always been her aim. She stated she had not received any of the requested information following her letter of 17 September 2018 but had been contacted by the landlord after she had lodged the application with the Tribunal. Her main concern initially was that the deposit would not be lodged and the dispute resolution scheme not available to her. She also stated the Respondent was a landlord for HMO properties and she wished to ensure other people would not have the same problem. She further reiterated that the tenancy agreement she was presented with was the wrong type of tenancy as this should have been a Private Residential Tenancy, which would have had different notice periods. She had to find out the landlord registration via the Council website. She asked the Tribunal take into account that the deposit was unprotected during the period of the tenancy and was only lodged with a scheme after she had raised proceedings with the Tribunal and that the landlord was involved in other leases.

### **Findings in Fact:**

- The parties had entered into a tenancy agreement commencing on 20 May 2018.
- A deposit of £400 was paid by the Applicant to the Respondent at the start of the tenancy
- The Respondent did not lodge the deposit with an approved scheme until 11 January 2019, when it was lodged with SafeDepositsScotland
- He did not provide his landlord registration number and the information about the deposit within the timescale stated in Regulation 42 (3) of the Regulations.
- He is a registered landlord and a member of the deposit scheme since 2017.
- The tenancy ended on 20 October 2018
- The Respondent was working in Africa at the time the tenancy was entered into and had a large workload and his wife was dealing with the matter at the time.

### **Reasons for Decision:**

Rule 18 of the Rules of Procedure states:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

Given the information available to the Tribunal which is undisputed the Tribunal considered that it could make a decision in the case without a hearing. The Respondent had been advised of the date and lodged a statement. He had not requested a postponement and not arranged representation. He had been advised the Tribunal may make a decision at the CMD.

The information provided in his email statement as far as it concerned the issue of the failure to comply with Regulation 42 was not disputed.

The tribunal considers that the landlord did not comply with the requirements of Regulations 3 and 42 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 in two respects. This is not disputed by him.

The deposit was not paid over to a registered scheme within 30 working days of the commencement of the tenancy agreement. The deposit had remained unprotected for the duration of the tenancy.

The Respondent had not provided any information about the deposit being lodged and the status of his landlord registration to the Applicant until January 2019 when the CMD was imminent.

Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 is a regulatory sanction to punish the landlord for non-compliance with the rules. There have been various approaches in calculating the appropriate sanction in terms of the Regulations. The preferred approach appears to be that adopted in *Jenson v Fappiano*, 2015 GWD 04-89 should be "fair, proportionate and just, having regard to the seriousness of the con-compliance".

The Tribunal has discretion to award up to three times the amount of the deposit, in this case the upper limit would be £1,200.

Ultimately the Regulations were put in place to ensure compliance with the Scheme and the benefits of dispute resolution in cases of disputed deposit cases, which the Schemes provide.

The Tribunal took into account:

1. the length of time the deposit was unprotected, namely until 11 January 2019 and thus for the entire duration of the tenancy.
2. the fact that the landlord and Respondent was not an "accidental" landlord with this being the first lease the landlord was involved in letting because he stated he had been a member of the deposit scheme since 2017 and thus since before the tenancy was entered into but also that there is no evidence that the Respondent is a professional landlord.
3. that the Respondent has explained that the matter of not lodging the deposit at the start of the tenancy was an oversight as he had been out of the country working and his wife was dealing with the lease

4. that the Respondent had not taken action after the Applicant's letter dated 17 September 2018, when he clearly had reason to consider the duties of lodging the deposit and providing the information asked for in the letter.
5. that lodging of the deposit had been completed only after he had been prompted to do so by the Applicant taking the matter to the Tribunal, which means that potentially without the Applicant taking action the Respondent would in all likelihood not have lodged the deposit or completed the registration for a further period.
6. that the deposit was now protected.

Taking all these matters into account the Tribunal considered that in all the circumstances the amount should not be at the maximum level of 3 times the deposit but that the breaches were of a severity and nature justifying an amount of £400 reflecting the amount of the deposit. The Tribunal notes that the matters raised by the Respondent regarding outstanding sums due by the Applicant are a matter which can now be addressed within the proper forum of the deposit scheme and notes that the Applicant has achieved her stated main aim of the application, namely that the deposit is now protected and the dispute resolution scheme is now available to both parties.

**Decision:**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) grants an order for payment by the Respondent to the Applicant of £400 in terms of Regulation 10 (a).**

**Decision:**

**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.

P Hennig-McFatrige

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**Legal Member/Chair**

23.1.19  

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**Date**