



**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/20/1051**

**Re: Property at 7 Thrashbush Quadrant, Airdrie, North Lanarkshire, ML6 6RF  
("the Property")**

**Parties:**

**Mr Gary Herbison and Ms Claire Anderson, 44 Langford Drive, Parkhouse  
Estate, Glasgow, G53 7HU ("the Applicants")**

**Mr David Meek and Ms Lesley Harrison, 21 Globe Park, Broxburn, EH52 6EF  
("the Respondents")**

**Tribunal Members:**

**Gillian Buchanan (Legal Member)**

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

At the Case Management Discussion ("CMD") the second named Applicant was in attendance and represented the first named Applicant. The Respondents were neither present nor represented.

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

- A CMD in this application previously took place on 21 September 2020. That CMD was adjourned due to issues with service of the application.
- The application was validly served on the Respondents by Sheriff Officers on 5 November 2020.
- The Respondents leased to the Applicants the subjects at 7 Thrashbush Quadrant, Airdrie, North Lanarkshire, ML6 6RF ("the Property") in terms of a Private Residential Tenancy Agreement dated 10 and 12 May 2018. ("the PRT").

- The PRT stated that the tenancy would commence on 12 May 2018 and that the rent payable in terms thereof would be £500 per calendar month payable in advance on the first day of each month.
- The PRT, at Clause 10, stated that the Applicants had lodged with the Respondents a deposit of £500 that would be lodged with Safedeposits Scotland (“SDS”).
- The Applicants paid the deposit of £500 to the Respondents on 18 April 2018.
- The Respondents did not pay the deposit into an approved scheme as required in terms of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) until 10 February 2020.
- The PRT ended on 28 February 2020.
- SDS refunded to the Applicants the deposit of £500 after the Applicants’ departure.

### **The Case Management Discussion**

At the CMD the second named Applicant stated:-

- That the Applicants did not receive from the Respondents any Certificate confirming that the deposit had been paid into an approved scheme. The first named Applicant had queried the position with the Respondents without any reply.
- The second named Applicant contacted SDS around the time of vacating the Property. SDS advised it did not hold the deposit.
- The second named Applicant contacted the Respondents again to enquire as to the position but received no reply.
- A couple of weeks later SDS advised the Applicants by letter that the deposit had been lodged. The Applicants could not locate that letter to lodge in these proceedings.
- That after the tenancy ended the Applicants contacted SDS to obtain a refund of the deposit.
- Emails were exchanged with the Respondents about the condition of the Property. The Respondents accepted that a problem with damp had been caused by an old pipe that had burst through no fault of the Applicants.
- The Applicants also challenged the Respondents’ position on the oven not being clean. The Applicants felt the Respondents were just stalling for time.
- Somewhat out of the blue, the full deposit monies appeared in the Applicants’ bank account.
- The Applicants seek the imposition of a penalty on the Respondents for their failure to comply with the Regulations.

### **Reasons for Decision**

- The Tribunal takes a landlord’s failure to comply with the Regulations” very seriously.
- As the Respondents were not in attendance the Tribunal had no information before it on the Respondents’ letting activities and on their experience as landlords.

- However the Tenancy Agreement, at Clause 10, narrates when the deposit paid requires lodged into an approved scheme and indeed the Respondents had completed Clause 10 to reflect that the scheme administrator in this instance would be SDS. Clause 10 also provides a link to a Scottish Government website where more details could be found if the position was unclear. In these circumstances the Tribunal cannot accept that the Respondents were ignorant of the Regulations.
- The Applicants had queried why the deposit had not been lodged in an approved scheme.
- The Respondents lodged the deposit with SDS on 10 February 2020.
- The Applicants' deposit was unprotected from the commencement of the tenancy until 9 February 2020.
- The Applicants had the benefit of the adjudication scheme offered by SDS at the end of the tenancy.
- The Tribunal is satisfied that the Respondents did not comply with Regulation 3 of the Regulations.
- The Respondents' failure to comply with the Regulations is a serious matter which requires to be marked accordingly in the absence of any mitigation being presented by the Respondents.
- The Tribunal determined that the Respondents must pay to the Applicant a sum of £1,250 which reflects the maximum penalty payable (3 x £500) less a discount of £250 for the fact the deposit was lodged by the Respondents with SDS towards the end of the tenancy.

## **Decision**

The Respondents are jointly and severally ordered to pay to the Applicants a sum of £1,250.

## **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.**

**Gillian Buchanan**

16 December 2020

Legal Member/Chair