

**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/21/2147**

**Re: Property at 53 Main street, Doune, Stirling, FK16 6BW (“the Property”)**

**Parties:**

**Mr Alun Epps, Jennifer Thomline, Machany, Main street, Killin, FK21 8UW (“the Applicants”)**

**Mr Mike Guest, C/o Belvoir Stirling, 79 Barnton Street, Stirling, FK8 1HT and whose current place of residence is unknown (“the Respondent”)**

**Tribunal Members:**

**Fiona Watson (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for payment of the undernoted sum to the Applicants:**

**Sum of FIVE HUNDRED AND FIFTY POUNDS (£550) STERLING**

- Background
- 1. An application was submitted to the Tribunal under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. Said application sought an order be made against the Respondent on the basis that the Respondent had failed to comply with his duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).

- The Case Management Discussion

2. A Case Management Discussion (“CMD”) took place on 17 December 2021. Both Applicants were personally present and representing themselves. There was no appearance by or on behalf of the Respondent. The Application had been served by way of website advertisement between 10 November 2021 and 17 December 2021, following a previous failed attempt of delivery by Sheriff Officers and the Respondent’s current place of residence being unknown.
3. The Applicants sought an order from the Tribunal on the basis that the Respondent had failed to comply with their duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the 2011 Regulations.
4. The Applicant submitted that they had entered into a tenancy with the Respondent which commenced 27 March 2020. A copy of the tenancy agreement was lodged with the application. The Applicants paid a £550 deposit to the Respondent’s letting agents, Belvoir. The Respondent’s letting agents emailed the Applicants on 5 November 2020 to advise that due to an administrative error, the deposit had not been lodged with a tenancy deposit scheme within 30 working days of the start of the tenancy. It was thereafter duly lodged in a scheme on 10 November 2020. The Applicants moved out of the property on 6 July 2021. The deposit was repaid to them in full thereafter.

- Findings in Fact

5. The Tribunal made the following findings in fact:

- (a) The parties entered into a private residential tenancy which commenced 27 March 2020;
- (b) The Applicants paid a deposit of £550 to the Respondent;
- (c) The Respondent failed to lodge the deposit of £550 into an approved tenancy deposit scheme under Regulation 3 of the 2011 Regulations within the prescribed timescale;
- (d) The Tenancy ended on 6 July 2021;
- (e) The Deposit has been returned in full to the Applicants.

- Findings in Law

6. The Tribunal made the following findings in law:

6.1 The Respondent was in breach of their duties under Regulation 3 of the 2011 Regulations, which states as follows:

**3** (1) *A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—*

- (a) pay the deposit to the scheme administrator of an approved scheme; and*
- (b) provide the tenant with the information required under regulation 42.*

(2) *The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.*

(3) *A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—*

- (a) in respect of which the landlord is a relevant person; and*
- (b) by virtue of which a house is occupied by an unconnected person, unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.*

(4) *In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.*

6.2 The Tribunal must grant an order in terms of Regulation 10 which states as follows:

10. *If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—*

- (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and*
- (b) may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to—*
  - (i) pay the tenancy deposit to an approved scheme; or*
  - (ii) provide the tenant with the information required under regulation 42.*

- Reasons for Decision

7. The Tribunal was satisfied that the Respondent was in breach of their duties under Regulations 3 as aforesaid.
  8. The 2011 Regulations were introduced to provide security for tenants in paying over deposits to landlords and to address an issue with some landlords taking tenancy deposits and then failing to pay them back where they were lawfully due at the end of the tenancy. The 2011 Regulations also provide that parties have access to an independent and impartial dispute resolution mechanism within a scheme to address any deposit deductions which require to be considered.
  9. The Tribunal noted that the Respondent's letting agents had explained to the Applicants that the deposit had not been lodged due to an administrative error on their part, and it was lodged thereafter. However, in terms of the Regulations the liability rests with the landlord under the lease and the application must be raised against them accordingly. The failure to lodge the deposit into an approved tenancy deposit scheme meant that the deposit was not protected for a period of just over seven months.
  10. The Tribunal noted that the deposit had been returned in full following the Applicants vacating the property. Whilst the Tribunal does not consider it to be satisfactory that the deposit was not lodged within the prescribed timescale, the Tribunal did not consider it appropriate nor justified under the circumstances to make an award at the higher end of the scale.
- Decision
11. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant in the undernoted sum:

FIVE HUNDRED AND FIFTY POUNDS (£550) STERLING

### **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.**

Fiona Watson

**Legal Member/Chair**

**Date: 17 December 2021**