



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”)**

**Chamber Ref: FTS/HPC/PR/21/2278**

**Re: Property at 65 Bothwell Road, Aberdeen, AB24 5DD (“the Property”)**

**Parties:**

**Mr Khalid Lodhia, 87 Bannermill Place, Aberdeen, AB24 5EE (“the Applicant”)**

**Mr Robert Williams, 327 Vetrna Drouzkovice Chomutov, Ustecky Kry, 43114, Czech Republic (“the Respondent”)**

**Tribunal Members:**

**Anne Mathie (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in respect of the Respondent’s failure to lodge the tenancy deposit in a recognised scheme be made in the sum of £1500.**

**Background**

1. This is an application in terms of Rule 103 of the Chamber Rules being an application for an order for payment where a landlord has not paid the deposit into an approved scheme. An application was lodged dated 13 September 2021 with the information prescribed in Rule 103.
2. The application was accepted and was set down for a case management discussion by telephone on 19 November 2021. On the morning of 19 November 2021 the Tribunal received the papers returned from Royal Mail, there having been no successful service on the Respondent in the Czech Republic due to problems with the address.
3. The Tribunal advised the Applicant at the case management discussion on 19 November 2021 that all the papers in the case had been

returned as there had been problems serving notice of the application and case management discussion on the Respondent. The Tribunal could have postponed the case management discussion that morning but felt it best to proceed and explain the position directly to the Applicant.

4. The Tribunal advised that it could not proceed to make a decision in circumstances where the Respondent was absent and it could not be shown that there had been successful service of the application and case management discussion details.

5. The Tribunal had a process whereby papers could be served by Website advertisement and a Notice of Direction would be issued to the Applicant in this regard.

6. The Tribunal issued a Notice of Direction directing the Applicant to lodge an application for service of the Tribunal's website. He accordingly did so and a further case management discussion was set down for today.

7. Written representations were received from the Respondent's representative by email on 18 January 2022 and were posted to the Applicant due to problems with his email account.

#### The Case Management Discussion

8. The case management discussion took place by teleconference today. The Applicant attended on his own behalf and Calvin Gordon, solicitor, of McEwan Fraser Legal appeared on behalf of the Respondent.

9. As preliminary matters, it was noted that the Respondent accepted fault and the case was restricted to the issue of quantum. It was also noted that written representations had been received from the Respondent only recently but the Applicant confirmed he had had sight of these. The Tribunal also confirmed that this case was only in respect of the Respondent's failure to lodge the deposit in a recognised scheme and was not about whether the original deposit should be returned to the Applicant. This could be the subject of a separate application.

10. The Respondent's representative put forward the following factors in mitigation, the Respondent admitted the failure, he was not a commercial landlord and only rented out one property, he had not wilfully flouted the 2011 Regulations and had offered to return the full deposit to the Applicant.

#### Findings in Fact

11.

- A deposit of £750 had been paid by the Applicant to the Respondent at the commencement of the tenancy.
- The Respondent, by his own admission, had breached the 2011 Regulations by failing to lodge the deposit in one of the recognised schemes.

## Reasons for Decision

12. Regulation 10 of the 2011 Regulations provides:

*“If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal...must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit...”*

13. The amount awarded is at the discretion of the Tribunal taking into account the facts and circumstances of each case. In this case the Tribunal took into account the following mitigating factors: the admission of the Respondent, the fact the Respondent was not a commercial landlord and only rented out one property, there was no deliberate attempt to flout the 2011 Regulations and the he had offered to return the full amount of the deposit to the Applicant. The Tribunal balanced this with the fact that the deposit had been unprotected from January 2018 until July 2021, a period of three and a half years. It also took into account that in this case, where there was a dispute between parties in relation to the return of the deposit, the Applicant would have benefitted from access to the dispute resolution mechanism operated by the tenancy deposit scheme. Ignorance of the 2011 Regulations was not a defence.

- Decision

14. The Tribunal decided to grant a payment order in the sum of £1500 representing two times the tenancy deposit.

## **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.**

21 January 2022

**Legal Member/Chair**

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**Date**