

**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/21/2776

**Re: Property at Flat 1/1 185 West Princes Street, Glasgow, G4 9BZ (“the
Property”)**

Parties:

**Miss Alexandra West, RM 102 Stewart House, 123 Elderslie Street, Glasgow,
G3 7AR (“the Applicant”)**

Mr Samiul Khan, Unknown, Unknown (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Respondent should pay to the Applicant the
sum of £1400 having found that the Respondent had breached the duties set
out in Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations
2011.**

Background

1.This is an application under Regulation 9 of the Tenancy Deposit Schemes
(Scotland) Regulations and Rule 103 of the Tribunal rules of procedure in respect of
an alleged failure to comply with the duties required of a landlord under Regulation 3
of the 2011 regulations.

2.The Application was first lodged with the Tribunal on 4th November 2021 and
accepted by the tribunal on 12th November 2021. A case management discussion

was set down for 22nd December 2021, but this could not go ahead as papers were not served on the Respondent with the Tribunal receiving information that the Respondent now lived in Dubai. The application was listed to be served by advertisement and a new case management discussion was set down for 21 January 2022 at 2pm.

Case Management Discussion

3.The Case management discussion was attended by the Applicant, Mrs Penelope West as her representative and a Mr Paul Jamieson as her supporter.

4.There was no appearance by or on behalf of the Respondent whose current address details were unknown. The Tribunal member noted that the Application had been subject to service by advertisement on the Tribunal website for a period of more than 14 days and that the terms of Rule 6A of the Tribunal rules of procedure had been complied with. The Tribunal considered that fair notice had been given to the Respondent in terms of the rules and that it was appropriate to proceed in the absence of the Respondent.

5.The Tribunal had sight of the application, a tenancy agreement, an AT 5 notice, text messages, What's app communications, bank statements, letters and proof of postage of letters.

6.The Applicant had moved into the property with another tenant a Miss Bowie on 14th August 2020.This was joint tenancy of a two-bedroom flat with monthly rent payable of £450 each. Despite the terms of the tenancy agreement indicating that a deposit of £ 900 was to be paid the Applicant and the other tenant each paid £711 before they moved into the property and the Applicant had lodged a bank statement showing the payment she had made. They had moved in in the middle of a month and effectively overpaid rent, so the other tenant had negotiated with the landlord to use the remaining rent money to cover the last month's rent. The Applicant's position was that of the £711 paid by each of them, £900 was for a month's rent and the remaining sum of £522 was the total deposit paid for the property. She had lodged text and What's app messages between the parties showing the arrangements which were made.

7.The tenancy ended on 13th August 2021 and the Applicant and the other tenant moved out of the property. The other tenant was present when the Respondent viewed the property, and the Respondent returned her deposit of £261 to her. She confirmed this by text message to the Applicant's mother in September 2021 saying that she had raised with the Respondent when she saw him the issue of the Applicant's deposit, but he had indicated it would be better to deal with that by messaging and that he would message the Applicant "soon". No messages were received from the Respondent and at no stage did the Applicant receive her deposit back although she had made attempts to contact the Respondent regarding the matter by What's app messages and letter.

8.At no stage during or after the tenancy did the Applicant receive any information regarding the whereabouts of her deposit. At no time did she receive any confirmation that it was held in an approved tenancy deposit scheme or any of the

information required to be given by a landlord in terms of regulations 3 and 42 of the Regulations. She believed that the other tenant Miss Bowie was in a similar position.

9.The Applicant advised the Tribunal that she had no contact with the other tenant and did not know her current whereabouts. The tribunal indicated that the whole deposit paid was considered by the Tribunal in determining the application and that if a sanction was made that the other tenant could have a legal right to half of any financial sanction imposed. The Applicant indicated that in the event of a financial sanction being imposed she would try to advise the other tenant but did not know of her whereabouts so could only make efforts to let her know of the outcome if she could.

10.The Applicant was concerned regarding the return of her deposit, but the Tribunal member explained that the application related only to a sanction on a landlord if it was found that the duties in Regulation 3 of the 2011 Regulations had not been complied with and the Tribunal could not deal with a request for return of the deposit paid in terms of the application made.

11.The Tribunal member was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

12.The Tribunal found that the Respondent had breached the terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 in that the total tenancy deposit paid by both tenants had not been paid into an approved scheme at any time during the tenancy and the information required to be given to tenants in terms of Regulations 3 and 42 of the 2011 Regulations had not been provided to the Applicant or the other tenant at the property.

13.The Applicant did not wish to address the tribunal on the amount of any sanction to be imposed and indicated that this was a matter for the Tribunal to decide upon.

Findings in Fact

14.The Applicant and another tenant entered into a tenancy agreement at the property with the Respondent from 14th August 2020 until 13th August 2021.

15.The monthly rent payable was £450 paid by each of the tenants making a total of £900 per month.

16.The Applicant and the other tenant each paid the landlord a deposit of £261 at the start of the tenancy giving a total deposit paid of £522.

17.The tenancy was a relevant tenancy within the meaning of Regulation 3 of the 2011 Regulations.

18.The total deposit paid by the Applicant and the other tenant was not paid into an approved tenancy deposit scheme at any stage during the tenancy.

19.The other tenant at the property had her deposit returned to her by the Respondent but the Applicant has not secured the return of her deposit despite requests.

20.The information Required to be given to the Applicant and the other tenant at the property in terms of Regulation 3 and 42 of the 2011 Regulations was not given to them by the Respondent.

Reasons for Decision

21.The Tribunal having found that there was a breach of the Regulations, it then fell to the Tribunal to consider what sanction should be made in respect of the failure to protect the deposit and give the information required in terms of Regulation 3 of the 2011 Regulations within the required timeframe. The Tribunal had regard to the case of ***Russell - Smith and others against Uchegbu [2016]SC EDIN 64***. In particular the Tribunal considered what was a fair proportionate and just sanction in the circumstances of the case always having regard to the purpose of the Regulations and the gravity of the breach. Each case will depend on its own facts and in the end of the day the exercise by the tribunal of its judicial discretion as a balancing exercise,

22. The Tribunal considered all the information before it and found it to be of significance that the deposit had been unprotected for the entire period of the tenancy after the expiry of the timescale for protecting it as set out in the Regulations, and the required information had not been given to tenants at any stage. In addition, there was no mention of protection of the tenancy deposit within the tenancy agreement, which in itself was not in proper form as it purported to be a short, assured tenancy which as a matter of law could not be created in 2020.In addition the landlord had made use of an AT5 form which should not have applied to a tenancy created at the time this tenancy started in August 2020. The Tribunal also noted that whilst one tenant had secured the return of her deposit the Applicant had not, despite requests, and the tribunal formed the view that the circumstances pointed to a landlord who was simply not adhering to the requirements of the Regulations and a sanction at the higher end of the possible sanctions was appropriate. The Tribunal sanctioned the Respondent in the sum of £1400, a sum close to the maximum sanction available of £1566.

Decision

The tribunal determined that the Respondent should pay to the Applicant the sum of £1400 in total having found that the Respondent breached the duties on a landlord set out in Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

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.

Valerie Bremner

Legal Member/Chair

21.01.22
Date