



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

**Chamber Ref: FTS/HPC/PR/20/0491**

**Re: Property at 84 Harburn Drive, West Calder, West Lothian, EH55 8AR (“the Property”)**

**Parties:**

**Miss Lorraine Orr, Mr James Graham, 84 Harburn Drive, West Calder, West Lothian, EH55 8AR (“the Applicant”)**

**Mr Jonathan Porter, 89 Burngrange Cottages, West Calder, EH55 8ER (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (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 be made against the Respondent in favour of the Applicants in the sum of ONE THOUSAND AND FIFTY POUNDS STERLING (£1,050)**

**Introduction**

**This is an application under Rule 103 and The Tenancy Deposit Schemes (Scotland) Regulations 2011.**

**Service of the proceedings was lawfully served on the Respondent on 24 July 2020. The Respondent did not lodge any response or written submissions.**

**A Case Management Discussion (CMD) was held at 2pm on 18 August 2020.**

**The applicants represented their own interests. They both joined the teleconference from separate locations. The Respondent also joined and represented his own interests.**

## **Findings and Reasons**

The parties entered in to a lease arrangement for the property at 84 Harburn Drive, West Calder, West Lothian, commencing on 8 November 2019. This was a Private Residential Tenancy. Following Notice to Leave being served upon them, the Respondents vacated the Property in early March 2020. The Applicants are the former joint tenants. The Respondent is the former landlord.

The Applicants paid a £525 deposit, recorded in the written lease. Under the Regulations the Respondent had a legal duty to pay the deposit into an approved scheme in terms of Regulation 3.

The Respondent accepted in the course of the hearing that he had received the deposit and that he had failed to comply with the Regulations. These are the essential facts upon which the application is based. These facts are not in dispute.

There was no need to fix an evidential hearing. The Tribunal has the power to determine applications at the CMD in the absence of any dispute regarding the essential facts. Both parties were afforded the opportunity of making all submissions they wished to rely upon.

It is unclear whether the Respondent is, or is not, a registered landlord. He failed to provide a landlord registration number to the applicants and the details of such registration has been left blank in the written lease. Operating as an unregistered landlord in Scotland is a criminal offence. The Respondent stated at the CMD that he was formerly registered but has allowed his registration to lapse. He was vague as to whether or not he was a registered landlord for any duration of the lease. It seems unlikely that he was.

In terms of Regulation 10 the Tribunal must make an order against the Respondent for an amount not exceeding three times the amount of the deposit. The making of an order against the Respondent is mandatory.

In all of the circumstances an order representing two times the value of the deposit paid is fair, reasonable and proportionate. The Respondent has not evidenced that he is a registered landlord. Lack of registration is a serious matter. He has clearly breached the tenancy deposit regulations. He has cooperated with this Tribunal process, accepting his failures. He provided some explanation regarding his actions despite acknowledging an awareness of the Regulations. Ignorance of the Regulations would not amount to an excuse or defence. Neither do the Respondent's explanations. He stated that he was renting out three properties and was having cash flow problems at the time and therefore used the deposit to fund his letting business. In all these circumstances the Tribunal finds that it is fair and proportionate to make an order in the sum of two times the deposit of £525 which equals £1,050. An order for payment against the Respondent is made in this sum. This reflects the seriousness of the Respondent's actions and failures whilst recognising his cooperation with this process, his explanation, and the fact that the Respondent

**has had no similar findings made against him by the Tribunal. There is unlikely to be any repetition. The relevant property has been repossessed by the lender and the Respondent stated that he has ceased any letting business interests.**

### **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.**

**Legal Member/Chair**

**Date: 18 August 2020**