



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

**Chamber Ref: FTS/HPC/PR/21/1004**

**Re: Property at 4 Loanhead Cottage, Hillside, Montrose, DD10 9HD (“the Property”)**

**Parties:**

**Miss Aimee Scott, 11 King Street, Ferryden, Montrose, DD10 9PR (“the Applicant”)**

**Mr Mark Gordon, 18 Davidson Place, St Cyrus, By Montrose, DD10 0BS (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent in the sum of £800.00**

**Background**

1. By application dated 22 April 2021 the Applicant complained to the Tribunal that the Respondent had failed to lodge her deposit paid in respect of her tenancy of the property into an approved tenancy deposit scheme in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicant provided a written statement together with copies of bank transaction details and text message exchanges between the parties in support of her application.
2. By Notice of Acceptance dated 10 June 2021 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was sent to the Applicant by post and was served on the Respondent by Sheriff Officers on 21 June 2021.
4. The Respondent contacted the Tribunal administration by email on 28 June 2021 and stated that he was neither the owner of the property nor took any payment for rent and that the deposit was available for collection from 5 Loanhead Cottage or the property owner could send a cheque.
5. In light of the Respondent's written representations the Legal Member of the Tribunal arranged for the Tribunal administration to write to the parties on 6 July 2021 advising that it would be necessary for the issues raised to be considered in more detail at the CMD and that if either party had any further correspondence, they believed would support their case it should be lodged within the next seven days.
6. Neither party submitted any further written representations in advance of the CMD.

### **The Case Management Discussion**

7. A CMD was held by teleconference on 22 July 2021. The Applicant attended in person. The Respondent did not attend and was not represented. The Tribunal being satisfied that the Respondent had been given proper intimation of the CMD determined to proceed in his absence.
8. The Applicant explained that she had been told about the property being available to rent by her friend Linnsey Livie who had seen it advertised on the Respondent's Facebook page. She had arranged a viewing with the Respondent who had showed the Applicant round the property.
9. The Applicant said that the Respondent was definitely her landlord. All her dealings with regards to the property were with the Respondent. If there were any issues, she said she had to message him. She said that the Respondent never mentioned his father being the landlord.
10. The Applicant said that she had paid the initial month's rent and deposit in cash to the Respondent. She did not receive a receipt. She said she had at that time asked where the deposit was being held but had not received a reply.
11. The Applicant explained that although she had rented on one previous occasion, she had not thought about not being given a tenancy agreement. She recalled asking for the Respondent's bank details and being told she was to pay in cash by leaving the rent in an envelope each month with the Respondent's father. The Applicant recalled that one month she had been a few days late in paying the rent as she had been away skiing and the Respondent had called her to say that he had been to his father's and the rent was not there. She said that she had forgotten about it and the Respondent's father had come and collected the envelope.

12. The Applicant went on to say that there had been an issue in October 2020 when her partner had moved in as she had a dog. She said that the Respondent had told her that he did not allow two dogs in any of his properties. She said however that the Respondent had relented eventually as the dog was not there all the time.
13. The Applicant went on to say that she had been told by the Respondent that he was going to sell the property and needed it valued and had arrived at the property with a lady. He had said that the Applicant would be able to remain in the property after it was sold as they would just have a new landlord.
14. The Applicant said that she moved out of the property on 27 March 2021 and then returned over the next few days to clean it and returned the keys on 31 March 2021
15. The Applicant referred the Tribunal to her written submissions and to the text message exchanges with the Respondent. She said that since she had made the application to the Tribunal, she had been advised by the Respondent's son that she could collect the deposit from 5 Loanhead Cottage or that he could arrange to meet her with it.
16. The Applicant explained that initially all she had been looking for was her deposit back but that because of the advice she had been given by the C.A.B. and Shelter and all the hassle she had been through she wished the Tribunal to impose an appropriate sanction upon the Respondent.

### **Findings in Fact and Law**

17. The parties entered into a Private Residential Tenancy agreement that commenced on 1 October 2019 and ended on 31 March 2021.
18. The monthly rent was £400.00.
19. The Applicant paid the Respondent the first month's rent together with a deposit of £400.00 in cash on 1 October 2021. She did not receive a receipt.
20. The Applicant paid rent each month in cash by leaving money in an envelope with the Respondent's father at 5 Loanhead Cottage, Hillside, Montrose.
21. The Respondent held himself out to the Applicant as the landlord of the property.
22. At no time throughout the duration of the tenancy did the Respondent advise the Applicant that he was acting as an agent for a disclosed principal namely his parents or his father.
23. The Respondent failed to lodge the Applicant's deposit in an approved Tenancy Deposit Scheme throughout the entire duration of the tenancy.

24. The Respondent has retained the Applicant's deposit.
25. The Respondent is in breach of Regulation 3 of the 2011 Regulations.
26. The Applicant submitted her application to the Housing and Property Chamber on 22 April 2021 and within three months of the end of the tenancy. In terms of Regulation 9 of the 2011 Regulation the application was timeous.
27. As the Respondent was in breach of Regulation 3 and the Applicant's application was timeous the Tribunal is obliged to impose a sanction upon the Respondent of up to three times the deposit.

### **Reasons for Decision**

28. The Tribunal was satisfied from the written submissions of the Applicant together with the text messages and other document produced as well as the oral submissions made by the Applicant at the CMD that the Respondent had throughout the duration of the tenancy held himself out as the landlord of the property. There was nothing to suggest that the Respondent had ever indicated to the Applicant that he was acting as an agent for his parents or his father as suggested in the Respondent's written representation to the Tribunal. It would have been open to the Respondent to attend the CMD but he chose not to. The text message exchanges between the parties were indicative of a landlord/tenant relationship. The initial rent payment and payment of the deposit was made to the Respondent. Although the monthly rent was paid in cash to the Respondent's father it was left in an envelope as the Applicant understood to be collected by the Respondent who contacted her on the one occasion when the payment was late. Taking everything into account the Tribunal was satisfied that the Respondent was the landlord or held himself out to the Applicant to be the landlord.
29. Given that the Respondent has offered to pay back the deposit to the Applicant it follows that it must be accepted that the deposit was not lodged with an approved tenancy deposit scheme and that therefore the Respondent was in breach of Regulation 3 of the 2011 Regulations which requires a tenant's deposit to be lodged in an approved scheme within 30 working days.
30. The Applicant's application to the Tribunal was made within three months of the end of the tenancy and was therefore timeous in terms of Regulation 9 of the 2011 Regulations.
31. Regulation 10 of the 2011 Regulations provides that where there has been a breach of Regulation 3 and Regulation 9 has been satisfied the Tribunal must impose a sanction on the landlord of up to three times the deposit paid by the tenant.
32. Any award under Regulation 10 requires to reflect a sanction which is fair and proportionate and just given the circumstances (*Jensen v Fappiano* 2015 GWD 4-89). In *Tenzin v Russell* 2015 Hous. L.R. 11 it was held that any payment in

terms of Regulation 10 is the subject of judicial discretion after careful consideration of all the circumstances of the case.

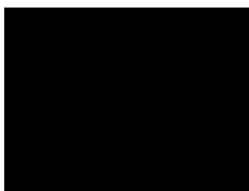
33. The Tribunal took into account that the Applicant's deposit had remained unprotected for a period of eighteen months. It also acknowledged that as a result of the deposit not being lodged in an approved scheme the Applicant was denied the opportunity of availing herself of a scheme's alternative dispute resolution service to challenge any deduction made by the landlord from the deposit. The Tribunal did however acknowledge that after the Applicant had submitted her application to the Housing and Property Chamber the Respondent offered to repay the deposit. Nonetheless it did appear to the Tribunal that this was a serious breach. The Tribunal was also concerned that the Applicant had not been provided with a written tenancy agreement or a receipt for her cash payments and that the landlord was apparently unregistered. Taking everything into account the Tribunal determined that an appropriate sanction would be to award the Applicant an amount equivalent to two times the deposit namely £800.00.

### **Decision**

34. The Tribunal finds the Applicant entitled to an order for payment by the Respondent in the sum of £800.00.

### **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.**



**Graham Harding**  
Legal Member/Chair

**22 July 2021**  
Date