



**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/20/2667**

**Re: Property at 37 Dunbar Court, Auchterarder, PH3 1SE (“the Property”)**

**Parties:**

**Mr Simon Malaterre, Northview (Upper Flat), Main Road, Aberuthven, PH3 1HE (“the Applicant”)**

**Mr Alexander Jones, 119 Moor Hall Drive, Four Oaks, Sutton Coldfield, West Midlands, B75 6LS (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order in the sum of One Thousand Two Hundred Pounds (£1,200) should be made against the Respondent**

Introduction

This is an application under Rule 103, and Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Service of the proceedings and intimation of the Case Management Discussion (CMD) was effected upon the respondent on 16 February 2021 by Process Servers in England.

The CMD took place on 23 March 2021 at 2.00 pm. The hearing was conducted by teleconference.

The applicant joined the hearing personally and represented his own interests. The respondent did not participate. He was represented by Mr Jwad Hanif, of Miller, Beckett & Jackson, solicitors.

### Findings and Reasons

The property is 37 Dunbar Court, Auchterarder PH3 1SE.

The applicant is Mr Simon Malaterre. He is the former tenant of the property. The respondent is Mr Alexander Jones, who is the former landlord.

The parties entered into a short assured tenancy which commenced on 10 April 2014. A deposit was paid in the sum of £600.

By way of agreement between the parties, the tenancy ended on 9 November 2020.

The applicant identified that the respondent failed to pay the tenancy deposit in the sum of £600 into an approved scheme. The applicant has produced vouched evidence from the three approved schemes in Scotland to confirm that they did not hold his tenancy deposit. The vouching is from Safe Deposits Scotland, My Deposits Scotland and Letting Protection Scotland.

Written submissions on behalf of the respondent had been lodged in advance of the CMD. This confirmed clearly that the respondent accepts that he had breached the Regulations.

Regulation 3 of the 2011 Regulations require that a landlord who has received a tenancy deposit must, within 30 working days of the beginning of the tenancy, pay the deposit into an approved scheme. On the basis of the documentary evidence, which is found to be credible and reliable, together with the admission made, the Tribunal found that the respondent had failed in this duty.

Regulation 10 of the 2011 Regulations imposes upon the Tribunal a mandatory direction to impose a penalty upon a landlord who does not meet their tenancy deposit duties and obligations under the 2011 Regulations. The Tribunal must order that the relevant landlord pay to the tenant an amount not exceeding three times the amount of the tenancy deposit.

The Tribunal must weigh up all relevant factors regarding the facts and circumstances of the particular case to determine the appropriate and proportionate penalty to be imposed upon the landlord.

The respondent in this application has cooperated fully with the Tribunal process. It was said that the respondent's failure was due to ignorance of the regulations and not an intentional breach. He was described as an 'amateur landlord'. He is 75 years of age, lives in England and has no other properties which he lets out. He is now a registered landlord, but importantly was operating as an unregistered landlord

throughout the duration of the lease between the parties. This is a serious matter. Operating as an unregistered landlord is a criminal offence.

The applicant's deposit was ultimately paid back in full but this was only after a significant delay of more than three months. The applicant was understandably anxious regarding return of his deposit given that it was unprotected.

In all of the circumstances, the Tribunal concluded that a fair and proportionate penalty to be imposed upon the respondent is the sum of £1,200 representing twice the deposit paid. This reinforces and underlines the serious nature of the respondent's failure to abide by the 2011 Regulations. It is essential that members of the public entering into tenancy contracts with landlords have the confidence that their deposits are adequately protected and that corresponding adequate sanctions are imposed upon landlords who fail to adhere to the Regulations. The Regulations and other requirements and obligations imposed upon private landlords are to improve standards and eradicate bad practice. Amateur landlords are generally not good landlords and amateurs in any trade, profession or otherwise are best avoided. It is clear that the respondent has had little or no regard to any of his obligations as a professional landlord.

### **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.**

**R.M**

**23 March 2021**

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**Legal Member/Chair**

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**Date**