



**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/21/0092**

**Re: Property at Flat 1/2, 482 Great Western Road, Kelvinbridge, Glasgow, G12 8EW (“the Property”)**

**Parties:**

**Mx Marion Cromb, Flat 1/1, 8 Dixon Road, Glasgow G42 8AY (“the Applicant”) and**

**Mr William Gardner and Mrs Jean Gardner, 5 St Patrick’s Court, Lanark, ML11 9ES (“the Respondents”) and  
Tay Letting, 8 Eagle Street, Craighall Business Park, Glasgow, G4 9XA (“the Respondents’ Representative”)**

**Tribunal Member:**

**G McWilliams (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £150.00, in terms of Regulation 10 (a) of the 2011 Regulations, should be made.**

**Background**

1. This Application, lodged with the Tribunal between 15<sup>th</sup> January 2021 and 27<sup>th</sup> January 2021, was brought in terms of Rule 103 (Application for order of payment where Landlord has not paid the deposit into an approved scheme) of the First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the 2017 Regulations”). The parties’ tenancy agreement began on 21<sup>st</sup> December 2019 and ended on 30<sup>th</sup> November 2020. The Applicant paid a deposit amount of £475.00 at the commencement of the tenancy and this was lodged with Safe Deposits Scotland on 25<sup>th</sup> February 2020

## Case Management Discussion

2. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call on 16<sup>th</sup> March 2021. The Applicant, Mx M Cromb, and the Respondents’ Representative’s Mr D Gibb attended.
3. At the CMD, the Applicant and the Respondent’s representative agreed that the former’s deposit payment of £475.00 was lodged with Safe Deposits Scotland, and protected, 19 days late, in terms of the requirement in Regulation 3 of the 2011 Regulations.
4. The Applicant sought payment of an appropriate sanction amount, and that this amount be determined by the Tribunal. She expressed frustration as a result of other dealings with the Representative.
5. Mr Gibb stated that there had been an administrative error on the part of the Respondent’s Representative as they had misclassified the Applicant’s deposit payment monies. He stated that, upon discovering the error, the Representative immediately rectified the matter and protected the Applicant’s deposit monies. Mr Gibb stated that the Representative would pay the sanction which the Tribunal must impose as a result of the late lodging of the deposit monies.

## Reasons for Decision

6. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”) provides that the Tribunal may do anything at a CMD which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all of the information and documentation it required and that it would determine the application.
7. The Application was brought timeously in terms of regulation 9(2) of the 2011 Regulations.
8. Regulation 3 of the 2011 Regulations (which came into force on 7<sup>th</sup> March 2011) provides as follows:  
“(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—  
(a) pay the deposit to the scheme administrator of an approved scheme; and  
(b) provide the tenant with the information required under Regulation 42.”
9. The Respondents, as Landlords, were required to pay the Applicant’s deposit monies into an approved scheme, either personally or through an agent, within 30 working days of 21<sup>st</sup> December 2019. This was not done.

10. Regulation 10 of the 2011 Regulations provides as follows:

“If satisfied that the landlord did not comply with any duty in Regulation 3 the First-tier Tribunal -

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(b) may, as the First-tier Tribunal considers appropriate in the circumstances of the application, order the landlord to—

(i) pay the tenancy deposit to an approved scheme; or

(ii) provide the tenant with the information required under Regulation 42.”

11. The Tribunal, being satisfied that the Respondents did not comply with their duty under Regulation 3, accordingly had to order the Respondents to pay the Applicant an amount not exceeding three times the amount of the tenancy deposit.

12. In the case of *Jenson v Fappiano* 2015 G.W.D 4-89, Sheriff Welsh, in relation to Regulation 10(a) of the 2011 Regulations, was of the opinion that there had to be a judicial analysis of the nature of the non-compliance in the circumstances of the case and a value attached to reflect a sanction which was fair, proportionate and just given those circumstances. Sheriff Welsh was of the opinion that, when determining the sanction value, the starting point was not the maximum award to be discounted by mitigating factors. He considered that this would be inconsistent with the exercise of balanced, judicial discretion.

13. In the case of *Tenzin v Russell* 2015 Hous. L. R. 11, the Court of Session reiterated that the amount of any payment in terms of Regulation 10(a) of the 2011 Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.

14. In determining a fair, proportionate and just sanction in the circumstances of this Application, the Tribunal considered and weighed all of the evidence and factors. The tenancy duration was almost one year. The deposit monies were lodged with Safe Deposits Scotland 19 days late. The Respondents' Representative, as an experienced Letting Agent, should have lodged the deposit timeously. When they discovered their administrative error, in not doing so timeously, they immediately rectified the matter and protected the Applicant's deposit monies.

15. Having exercised their judicial discretion, the Tribunal found, on a balance of probabilities, that the sum of £150.00 was an appropriate sanction to impose. The Tribunal found that this sum fairly, proportionately and justly reflected a sanction in respect of the Respondent's non-compliance with the Regulations, in the circumstances of this Application. The Applicant, and Mr Gibb, having been given the Tribunal's Decision orally today, agreed that the sanction imposed was fair and proportionate. Mr Gibb stated that he would take

immediate steps to arrange for payment of the sanction amount to the Applicant.

16. Accordingly the Tribunal determined that an order for payment by the Respondent to the Applicant of the sum of £150.00, in terms of Regulation 10(a) of the 2011 Regulations, should be made.

### **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.**

## **G. McWilliams**

\_\_\_\_\_  
Legal Member: G McWilliams

\_\_\_\_\_  
16<sup>th</sup> March 2021