



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/21/2114**

**Re: Property at 8 Watson Park, St Ola, Kirkwall, KW15 1WB (“the Property”)**

**Parties:**

**Mr Frank McKenzie, Mrs Karen McKenzie, 16 St Rognvald Street, Kirkwall, KW15 1PR (“the Applicants”)**

**Ms Shona Budge or Savage, The Inn, Holm, St Mary's, Orkney, KW17 2RT (“the Respondent”)**

**Tribunal Members:**

**Nicola Irvine (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order for payment against the Respondents in favour of the Applicant in the sum of £1,012.50.**

**Background**

[1] The Applicants submitted an application seeking an order for payment in terms of Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The Tribunal intimated the application to the Respondent by letter dated 19 October 2021. The Respondent was advised of the date, time and conference call details of today’s case management discussion. In that letter, the Respondent was advised that any written representations she wished to make should be sent to the Tribunal by 3 November 2021. The Respondent was also told that she required to take part in the case management discussion and was informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and considers the procedure to have been fair. The Respondent lodged written representations on 28 October and 17 November 2021.

## The Case Management Discussion

- [2] The Applicants' representative, Mr Dunbar, and the Respondent participated in the case management discussion which took place by conference call. The Respondent was accompanied by Mr Simpson, supporter. This case management discussion took place alongside a discussion in the related application which proceeds under chamber reference FTS/HPC/CV/21/2353.
- [3] The Respondent advised that she is not an experienced landlord and was entirely unaware of the Regulations until the Applicants' representative brought them to her attention. She is not a professional landlord; this is the only property that the Respondent has let out and it has now been sold. In her written representations, the Respondent advised that she had no intention to withhold the Applicants' deposit.
- [4] Findings in fact
- i. The parties entered into a tenancy dated 13 March 2018 in respect of the property.
  - ii. The Applicants paid a deposit of £675 to the Respondent by bank transfer at the outset of the tenancy.
  - iii. The Respondent failed to comply with her duty in terms of Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 in respect that the deposit paid by the Applicants was not paid to an administrator of an approved scheme within 30 days as required and separately, the Respondent failed to provide the Applicants with the prescribed information about their tenancy deposit in accordance with Regulation 42 within 30 days.

## Reason for Decision

- [5] The Tribunal proceeded on the basis of the written documents which were before it and the information provided by the parties at the case management discussion. The Respondent conceded that she had not paid the Applicants' deposit into an approved scheme within 30 days of receipt. There was no Deposit Protection Certificate issued to the Applicants. The fact that the deposit was not lodged resulted in the Applicants deposit being unprotected for the entire term of the tenancy.
- [6] The Regulations exist to protect a tenant's deposit and to provide the benefit of dispute resolution, if required.
- [7] The terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 are mandatory and state "*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.”*

- [8] The Tribunal was satisfied that the Respondent failed to comply with her duties in terms of that regulation. It was the Respondent's duty to pay the deposit to the scheme administrator and she failed to do that. The Tribunal was mindful of the fact that the Respondent consented to the Applicants' full deposit being returned to them.
- [9] The Tribunal considered that its discretion in making an award requires to be exercised in a manner consistent with the case *Jenson v Fappiano (Sheriff Court) (Lothian & Borders, Edinburgh) 28 January 2015*. It must be fair, just and proportionate and informed by taking account of the particular circumstances of the case.
- [10] The Tribunal considered the decision of the Upper Tribunal (UTS/AP/19/0020) which states: *“Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals.”*
- [11] The Tribunal considered that the present case is not at the most serious end of the scale and an appropriate sanction for failure to comply with the duties was to order the Respondent to pay the Applicants £1,012.50 which represents 1.5 times the amount of the deposit paid by the Applicants.

## **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.**

**Nicola Irvine**

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**Legal Member/Chair**

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**18 November 2021**

**Date**