



**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/21/2350**

**Re: Property at Panmure Court, 2 West Victoria Dock Road, Dundee, DD1 3BH  
("the Property")**

**Parties:**

**Mr Brian Allardice, 64 Dighty Street, Monifieth, DD5 4UG ("the Applicant")**

**Mr Martin Spink, 10 Market Gate, Arbroath, DD11 1AY ("the Respondent")**

**Tribunal Members:**

**Nicola Irvine (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") granted an order for payment against the Respondent in favour of the Applicant in the sum of £500.**

**Background**

- [1] The Applicant 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 13 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 he wished to make should be sent to the Tribunal by 3 November 2021. The Respondent was also told that he 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. Written representations were lodged by the Respondent's representative on 26 October 2021.

## The Case Management Discussion

[2] The Applicant participated in the case management discussion which took place by conference call. The discussion took place in the absence of the Respondent. The Tribunal observed that the email from Respondent's representative contained an acceptance that the deposit was not lodged in an approved scheme timeously. The Applicant advised that at the conclusion of the tenancy, the full deposit was returned to him. The Applicant accepted that the pandemic may have had an impact on how quickly his deposit was lodged with an approved scheme. Nonetheless, he sought an order for payment, given the admitted breach of the Regulations.

[3] Findings in fact

- i. The parties entered into a private residential tenancy agreement dated 20 January 2021 in respect of the property, which commenced 25 January 2021.
- ii. The Applicant paid a deposit of £850 to the Respondent's representative.
- iii. The Respondent failed to comply with his duty in terms of Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 in respect that the deposit paid by the Applicant was not paid to an administrator of an approved scheme within 30 days as required.

## Reason for Decision

- [4] The Tribunal proceeded on the basis of the written documents which were before it and the information provided by the Applicant at the case management discussion. There was an admission by the Respondent's representative (by email) that the Applicant's deposit was not placed in an approved scheme within 30 days of receipt. The tenancy commenced 25 January 2021 and the deposit was placed in an approved scheme on 10 March 2021, which was two weeks late. The fact that the deposit was not lodged timeously resulted in the Applicant's deposit being unprotected for a short time.
- [5] The Regulations exist to protect a tenant's deposit and to provide the benefit of dispute resolution, if required.
- [6] 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.*"

- [7] The Tribunal was satisfied that the Respondent failed to comply with his duties in terms of that regulation. It was the Respondent's duty to pay the deposit to the scheme administrator and he failed to do that. The Tribunal was mindful of the fact that the Respondent's representative took responsibility for the failure; the deposit was unprotected for a short period of time; and the Applicant received the full deposit at the conclusion of the tenancy.
- [8] 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.
- [9] 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.*"
- [10] 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 Applicant £500.

### **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**

**Date**

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**18 November 2021**