



**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/21/2088**

**Re: Property at 122 Glenmore, Whitburn, West Lothian, EH47 8NR (“the Property”)**

**Parties:**

**Miss Heather Bethune, 10 Dunlin Brae, Livingston, West Lothian, EH54 6UA (“the Applicant”)**

**Mr Robert Brown, 46 Yule Terrace, Blackburn, West Lothian, EH47 7HW (“the Respondent”)**

**Tribunal Member:**

**David Preston (Legal Member)**

**Decision:**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:**

- **The respondent had failed in his duty to pay the deposit paid by the Applicant to the scheme administrator of an approved scheme under Regulation 3(1)(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”); and**
- **Orders the Respondent to pay to the Applicant the sum of £1350 in terms of Regulation 10(a).**

**Background:**

1. **By application dated 26 August 2021 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 and Regulation 9 of the Regulations the applicant sought an order for payment under Regulation 10.**
2. **By Notice of Acceptance dated 29 September 2021 a legal member of the First-tier Tribunal with delegated powers so to do, accepted the application for**

determination by the First-tier Tribunal and appointed the case to a Case Management Discussion (“CMD”).

3. A CMD took place by telephone on 11 November 2021. Mr Michael Bethune attended on behalf of the applicant. There was no appearance by or on behalf of the respondent before 1415.
4. The tribunal had before it a Certificate of Service by Sheriff Officer dated 8 October 2021 which confirmed that the respondent had been duly served with the Notification of CMD and Application on that date.
5. Tribunal was satisfied that service had been duly effected, and that the respondent had voluntarily waived his right to attend or be represented at the CMD and accordingly it was content to proceed.

### **Discussion.**

1. The papers before the tribunal comprised: the application dated 26 August 2021; Tenancy Agreement dated 24 and 29 and June 2021; copy entries from the applicant’s bank statement dated 15 to 22 June 2021; copy receipt of £450 deposit dated 15 June 2021; copy text messages and emails between the parties; copy emails from Letting Protections Scotland dated 19 August 2021, My Deposits Scotland dated 23 August 2021 and Safe Deposits Scotland dated 19 July 2021; copy Gumtree advert for 122 Glenmore Place dated 28 July 2021; statement from the applicant; and a series of photographs.
2. Mr Bethune confirmed the information contained in his statement. He advised that the tenancy was intended for his daughter, Heather in June 2021. She had problems with her tenancy and was urgently looking for another flat. They identified the property as being suitable through Gumtree and entered into correspondence with the respondent. The respondent asked for a deposit of £100 initially to hold the property on the market until it had been inspected. Property was inspected but the respondent claimed to be under pressure and the inspection was cursory.
3. Having signed the tenancy agreement and paid the first month’s rent as well as the deposit of £450, the applicant visited the property to prepare to move in. She found the property suffered from a significant number of defects as detailed in the statement; the kitchen ceiling was water damaged; the kitchen sink was leaking; kitchen units were trapped and peeling; the bathroom floor was rotten with a large hole in the floor. Photographs were taken and submitted to the tribunal.
4. The applicant advised the respondent that she was unable to live in the property and the respondent failed to have any essential work carried out and consequently she returned the keys on 24 July 2021 by recorded delivery post.
5. The applicant has requested the return of the deposit on a number of occasions, but the respondent has failed to return it. The applicant enquired of the tenancy deposit schemes and ascertained that the deposit had not been lodged with them

6. The respondent did not attend the CMD to contradict any of the statement or photographs and accordingly the tribunal was happy to accept them as evidence that the deposit had not been paid into a recognised deposit scheme and the respondent had consequently failed to comply with his duty in terms of the Tenancy Deposit Scheme Regulations 2011.

#### **Reasons for Decision:**

6. Rule 17(1)(d) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the Tribunal "*may do anything at a case management discussion which it may do at a hearing, including making a decision*". The Tribunal was satisfied that it had before it all the information it required to make a decision and that it would, therefore do so without a hearing.
7. Regulation 10 of the 2011 Regulations provides that if the tribunal finds that the landlord did not comply with any duty in Regulation 3, the Tribunal *must* order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit.
8. The tribunal is required to exercise discretion in deciding what level of order is appropriate, subject to the maximum of three times the amount of the deposit. The circumstances in this case appeared to tribunal to demonstrate specific effort on the part of the respondent to avoid his responsibilities under the Regulations and considered that the maximum sanction of three times the amount of the deposit would be fair and proportionate.

#### **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.**

# D. Preston

11 November 2021