



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)**

**Chamber Ref: FTS/HPC/CV/20/0619**

**Re: Property at 28 Robertson Road, Dunfermline, Fife, KY12 0AS (“the Property”)**

**Parties:**

**Miss Karolin Vosu, 50 Hawthorn Terrace, Thornton, KY1 4DZ  
 (“the Applicant”)**

**Mr John Nicol, 28 Robertson Road, Dunfermline, KY12 0AS  
 (“the Respondent”)**

**Tribunal Members:**

**Ms. Susanne L. M. Tanner Q.C., Legal Member and Chair  
 Ms. Ann Moore, Ordinary Member**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that an order must be made in terms of Regulation 10 of the 2011 Regulations requiring the Respondent to pay to the Applicants the sum of TWO HUNDRED POUNDS (£200.00) Sterling**

## **1. Procedural background**

1.1. On 21 February 2020, the Applicant made an application (“the Application”) to the tribunal.

- 1.2. The Application was originally made in terms of Rule 111 of the 2017 Rules, namely an application for civil proceedings in relation to a private rented tenancy.
- 1.3. The Applicant attached to the Application:
  - 1.3.1. Emails from two tenancy deposit protection schemes;
  - 1.3.2. Screen shots of text messages; and
  - 1.3.3. Notes with photographs.
- 1.4. On 24 February 2020, the Application was accepted for determination by the tribunal.
- 1.5. By letter of 25 February 2020, the tribunal wrote to the Applicant, noting that a hearing in this case and the related case of CV/19/3988 would be joined. The Applicant was asked to confirm whether she wished this case to proceed under Rule 111, or Rule 103, and if the latter to confirm what amount she was seeking in a payment order by requesting an amendment to the Application.
- 1.6. On 25 February 2020, the Applicant replied stating that she wished to amend the Application to proceed under Rule 103 and Regulations 9 and 10 of the Tenancy Deposit (Scotland) Schemes Regulations; and that she wished to seek a payment order of £600. The Applicant attached further supporting evidence in the form of an email from a third tenancy deposit protection scheme, SafeDepositsScotland.
- 1.7. On 28 February 2020, the tribunal notified the parties that the Application had been referred to the tribunal and that a Hearing had been fixed for 1 April 2020 at 1400h at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy, KY1 1XT. Parties were advised that the tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision on the application. Parties were advised that if they did not attend the Hearing, this would not stop a decision or order from being made by the tribunal if the tribunal considered that it has sufficient information before it to do so and the procedure has been fair. The Respondent was invited to submit any written representations he wished by 20 March 2020. The Application paperwork and notification of the hearing was served on the Respondent.
- 1.8. The Respondent did not submit any written representations.
- 1.9. The Hearings in this and the related case were postponed as a result of the Covid-19 pandemic to a hearing by teleconference on 3 August 2020 at 1000h.

Both parties were notified of the date, time and arrangements for dialling in. A further reminder was sent in advance of the hearing.

1.10. An application by the Applicant for postponement of the hearing was made and refused by the tribunal for the reasons given. The Applicant confirmed that she would attend the hearing by teleconference.

## **2. Hearing – 3 August 2020 at 1000h – by teleconference**

2.1. The Applicant attended the hearing.

2.2. The Respondent attended the hearing.

2.3. The Respondent stated that he had made an offer to the Applicant at the CMD in the related case on 21 February 2020 to repay her £140.00 which was the balance of the deposit retained by him and that she had not accepted the offer. However, as the offer had not been accepted by her, the hearing had been fixed in that case and she had then made this Application to the tribunal in respect of the failure to lodge the deposit in a scheme.

2.4. The Respondent also stated that he felt uncomfortable dealing with the hearings on the phone as it would be preferable to see one another. The tribunal chair stated that due to current Covid-19 restrictions, and to prevent further delay, hearings are being scheduled by teleconference. The tribunal Chair asked whether he wished to make a request to adjourn the hearing which would then be considered by the tribunal. The Respondent stated that he understood, that he did not wish to make a request for an adjournment and was content to proceed.

2.5. The Applicant stated that she had not accepted the offer in the other case at the CMD because it was made on the basis that she would not make any other application to the tribunal and that would be the end of the matter and she wished to make this Application.

### **2.6. Application to amend**

2.7. The tribunal noted the Applicant's outstanding request to amend the Application which was made on 25 February 2020 and crossed over to the Respondent.

2.8. There was no objection to the request to amend the Application.

2.9. The tribunal consented to the Applicant's request to amend the Application and it was duly amended to proceed under Rule 103.

## **2.10. Documents**

2.11. The tribunal chair confirmed with parties that the only documents lodged were those in the Application paperwork, as referred to above.

2.12. The Applicant also wished to refer to the occupancy agreement which was lodged with the other application. A copy was made for this case and added to the papers.

2.13. The Respondent stated that he had no additional documents which he wished to lodge late.

## **2.14. Start and end date of the tenancy**

2.15. Both parties agreed that the start date of the tenancy was 6 September 2019. There was a "lodger agreement" for a room. This was stated to be for 12 months.

2.16. The Applicant stated that the Respondent knew that she was not going to stay for 12 months. She stated that they had originally agreed that it was going to end on 28 November 2019 but that the Respondent had extended the agreement until somewhere in December 2019 but that she was not actually living there. There were two other people living in that room, which the Applicant had arranged and asked for the Respondent's permission. Those people moved out by 22 December 2019. The Respondent extended her agreement so that they could stay in the room. The Applicant stated that she actually never really lived in the Property. She only lived there for three nights at the start. The Respondent told her that the minimum tenancy agreement was three months. The other people who sub let the room paid rent of £85 per week to her and she paid some of it to the Respondent in addition to a college bursary for £200 per month which was paid directly to the Respondent. The Applicant accepted that legally her tenancy agreement ended on 21 or 22 December 2019 when her friends moved out.

2.17. The Respondent stated that he normally puts a three months' minimum stay on everything. He was away working and he got a phone call from the Applicant asking him if her friends could stay. He had no objection to her friends staying. Initially he did not know that she was moving out after two or three nights. If he had known that she would not have got the agreement in the first place. It would have been twelve weeks from 6 September 2019. He went

away on tour by coach on 7 September 2019. He was basically away on tour until 5 October 2019. Then he went on holiday for two weeks and came back from his holiday on 16 October 2019. Twelve weeks from 6 September 2019 would have been up to 29 November 2019. The other people did not have a tenancy agreement because he was not there when they moved in. He had previously seen who they were and they took over under the Applicant's tenancy by agreement, until 21 December 2019. The Respondent stated that the Applicant's tenancy agreement ended on 21 December 2019.

## **2.18. The tenancy deposit**

2.19. It was agreed that the tenancy deposit of £200.00 was paid by the Applicant to the Respondent a few days before the tenancy commenced on 6 September 2019.

2.20. The Respondent admitted that he did not lodge the deposit money in a tenancy deposit protection scheme at any time. He stated that after the deposit money was paid to him by the Applicant, he went away on tour and was on tour for several weeks. During that time the Applicant's friends moved in. He stated that he did not know if she had got the deposit from her friends or if he would have to deposit the money she had paid to him. He stated that at the time that the money was paid he was aware of his obligations in terms of the 2011 Regulations. He said that he thought that the deposit money should have been paid into a scheme, he thought within 30 days or 60 days after payment. He stated that the money was paid by the Applicant by bank transfer into a personal bank account. It had stayed there for a period of time. He refunded £60 to the Applicant after the end of the tenancy, having retained £140.00 by way of a deduction for a replacement wardrobe at £180.00, with a deduction of £40.00 for fair wear and tear.

2.21. The Respondent stated that the balance of the tenancy deposit is in a safe in his hallway in cash.

2.22. The Respondent stated that as the other people had moved into the room, he did not know whose details to put on it for lodging. He stated that he did not have any discussions with the Applicant or her friends about the deposit or lodging the deposit. He worked away from home until the end of October 2019.

2.23. The Respondent stated that he has already offered the money to the Applicant and had been in a position to pay it on 21 February 2020 at the CMD in the other case. He stated that he would need to think about whether his offer still stands after all of the tribunal procedure and because there was damage to the room.

2.24. Ms Moore asked the Respondent whether in previous and subsequent tenancies he has lodged the deposit with a tenancy deposit protection scheme. He stated that he normally got the deposit and there are never any problems with getting the deposit returned. He stated that the tenant normally stays for around two months. He stated that he normally puts it in the safe with their name on it and they get it back in the same envelope. The Respondent stated that since the Applicant's tenancy ended, he has had someone for a couple of nights but there was no deposit and the room is now sitting empty. He stated that the Property is a room in his own residence and that at that time he was back and forward because of work.

2.25. The Applicant stated that the other people moved in at the end of September 2019 or start of October 2019. The Applicant agreed, with reference to screen shots of text messages that show a conversation between her and the Respondent in December 2019, that she got £60 back and that she was seeking the other £140. Because it was not lodged in a scheme she was unable to seek repayment through a scheme.

2.26. The Applicant repeated that an offer was made but it was contingent on no other action being taken.

2.27. The Applicant said that there were no text messages about the deposit at the time.

2.28. The Applicant has contacted all three of the tenancy deposit protection schemes in Scotland and none have any record of her deposit being lodged with them.

2.29. Both parties confirmed that they had nothing else to add. The tribunal adjourned to deliberate.

### **3. Findings in Fact**

3.1. The Applicant and the Respondent entered into a tenancy for the Property on 4 September 2019 which started on 16 September 2019 and ended on 21 December 2019.

3.2. The Applicant lived in the Property for around three days.

3.3. For part of the period of the tenancy, the Applicant sub-let her room to two friends, with the consent of the Respondent.

- 3.4. The Application to the tribunal was made on 21 February 2020, within three months of the end of the tenancy.
- 3.5. The Applicant paid a deposit of £200.00 to the Respondent on or about 4 September 2019.
- 3.6. The deposit should have been lodged with a deposit protection company within 30 working days of the start of the tenancy on 6 September 2019.
- 3.7. The Respondent has not lodged the Applicant's deposit with a tenancy deposit protection scheme.
- 3.8. The Applicant received repayment of £60.00 of her deposit in or about December 2019 and the Respondent retained £140.00 in respect of replacement of a wardrobe damaged beyond repair, with a deduction said to be for fair wear and tear.
- 3.9. The Respondent was first notified that the Applicant was complaining about the late lodging of the deposit on 28 February 2020 when he was served with the Application paperwork by the tribunal's administration, after a Case Management Discussion took place in a related case on 21 February 2020.
- 3.10. On 21 February 2020, the Respondent offered to pay to the Applicant £140.00 in respect of the balance of the deposit, on the condition that that was the end of matters between them in connection with the deposit and the Applicant declined that offer.

#### **4. Discussion**

- 4.1. The tribunal took account of the Applicants' written and oral submissions; and the Respondents' oral submissions.
- 4.2. In particular the tribunal had regard to the fact that the deposit was unprotected throughout the tenancy, when it should have been lodged within 30 working days of the start of the tenancy. The tenancy itself was short and only lasted until 21 December 2019, for the majority of which the Applicant was not living in the Property and had sub-let to two friends. The tribunal considered the period of for which the deposit was unprotected to be at the low end of the spectrum. The tribunal took account of the Respondent's submissions but did not consider his submission that he was working away for a lot of the time to be mitigatory. The tribunal took account of the fact that the Property was sub-let by the Applicant with the Respondent's consent and accepted that the Respondent may have been confused about in whose name the deposit should

be lodged, but he had not lodged it in either name or discussed it with the Applicant or her friends. The tribunal took account of the fact that the Applicants received only part of her deposit back after the end of the tenancy, with a deduction being made for a replacement piece of damaged furniture, but that the Respondent had offered to refund the full amount on 21 February 2020, which offer was refused by the Applicant, prior to the raising of this Application.

4.3. For the reasons outlined, the tribunal decided to make an order for payment by the Respondent to the Applicants of the sum of £200.00 which is equivalent to one times the amount of the deposit.

4.4. The tribunal chair informed the Applicant that the Payment Order could be enforced by the Applicant against the Respondent after the expiry of the permission to appeal period. The Respondent requested the Applicant to provide her bank details and offered to make payment by tomorrow. The tribunal facilitated that discussion taking place after the teleconference hearing and the parties undertook to correspond by text message and to send any confirmation of payment to the tribunal's administration.

**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.**

Susanne L M Tanner Q.C.  
Legal Member/Chair

\_\_\_\_\_ 3 August 2020