

Housing and Property Chamber
First-tier Tribunal for Scotland



**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 (Regulations)**

Chamber Ref: FTS/HPC/PR/18/0440

Re: Property at 2 Broomhouse Path, Edinburgh, EH11 3UL ("the Property")

Parties:

**Mr Jacek Krzychowiec, Ms Joanna Krzychowiec, 16/6 Pennywell Road,
Edinburgh, EH4 4HB ("the Applicant")**

**Mrs Magdalena Szypulska-Zabluda, 116 Fernieside Crescent, Edinburgh, EH17
7DH ("the Respondent")**

Tribunal Members:

**Alan Strain (Legal Member), Ann Moore (Ordinary Member) and Ewan Miller
(Legal Member [Reviewer])**

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that the Respondent pay to the Applicants the sum of
£700.**

Background

This is an application under Regulation 9 of the Regulations and Rule 103 of the
Procedure Rules in respect of an alleged failure by the Respondent to protect a
tenancy deposit.

The Tribunal had the following relevant documents before it:

1. Application dated 14 February 2018;
2. Assured Tenancy Agreement dated 20 November 2014 (1st Lease);
3. Assured Tenancy Agreement dated 1 October 2015 (2nd Lease);
4. Safe Deposits Scotland Certificate dated 11 December 2017.

Hearing

Mr Alan Strain

The Applicants were present and represented themselves. The Respondent was present and represented herself.

The case had called for 2 Case Management Discussions (**CMD**) previously in terms of which many of the facts were agreed and narrated in the CMD notes. The issues between the Parties were narrow and amounted to whether or not a deposit had been paid in respect of the 2nd Lease and if so whether the Regulations had been breached and what award if any should be made.

The Tribunal heard evidence from the Applicants, the Respondent and the Respondent's husband.

The Applicants' position was that at the point of entering in to the 2nd lease there had been a discussion and agreement to transfer the original deposit of £700 paid in respect of the 1st lease across. The deposit on the 1st lease having been paid on behalf of the Second Applicant and his son as tenants.

The Respondent's position was that she had not agreed to do so; had requested payment at that meeting and subsequently of a new deposit; and was unable to close off the 1st lease and deposit until she had received confirmation from the son who had contributed half the deposit.

The Respondent further explained that she was unaware of the requirement to register a deposit until December 2017. She had spoke to Safe Deposits Scotland (**SDS**) and been advised that she could not register the deposit for the 1st lease as it had expired. She registered it in respect of the 2nd lease and designated the Applicants as the tenants. She subsequently obtained payment of the deposit from SDS in respect of rent arrears and damages.

Having heard the evidence, so far as material, the Tribunal made the following findings in fact:

1. The Respondent entered in to the 1st Lease with the Second Applicant and his son on 20 November 2014;
2. The Respondent received payment of a deposit of £700 in respect of the 1st lease;
3. A 2nd lease was entered in to with the Applicants and the Respondent on 1 October 2015;
4. The deposit in respect of the 1st lease transferred and was used by the Respondent as the deposit in respect of the 2nd lease;
5. The Respondent is an inexperienced landlord and did not know of her obligation to protect the deposit until December 2017;
6. The Respondent protected the deposit with SDS as soon as she became aware of her obligation to do so;
7. The Deposit was protected in the name of the Applicants;
8. The Respondent received payment from SDS of the deposit of £700.

Reasons

Mr Alan Strain

The Tribunal accepted the evidence of the Applicants that the deposit had transferred from the 1st lease to the 2nd at the commencement of the 2nd lease and that this was agreed with the Respondent. This is corroborated by the fact that the Respondent entered in to the 2nd lease with the Applicants which provided for payment of the deposit; held on to the deposit from the 1st lease; protected the deposit in the name of the Applicants with SDS and subsequently received payment from SDS in respect of the termination of the 2nd lease.

The deposit had been unprotected for a period of 2 years 2 months. This was a breach of the Regulations.

It then fell to the Tribunal to determine what award should be made in respect of the breach. In so doing the Tribunal considered and adopted the approach set out in ***Russell-Smith and Others v Uchegbu [2016] SC EDIN 64***. In particular the Tribunal considered what was a fair, proportionate and just sanction in the circumstances of the case, always having regard to the purpose of the Regulations and the gravity of the breach. Each case will depend on its own facts and in the end of the day the exercise by the Tribunal of its judicial discretion is a balancing exercise.

The Tribunal weighed all the factors and found it to be of significance that the deposit had been unprotected for 2 years and 2 months; that the Respondent was an inexperienced landlord; the Respondent was unaware of the Regulations and acted immediately it came to her attention. Furthermore, the Applicants had not been prejudiced.

The Tribunal accordingly found the breach to be at the lower end of the scale and awarded £700 to be paid by the Respondent to 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.

Mr Alan Strain

Legal Member/Chair

20/2/19

Date