



**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/19/0735**

**Re: Property at 3/3, 2 Littlemill Court, Bowling, G60 5BP ("the Property")**

**Parties:**

**Ms Catherine Brooks, 0/2, 40 Dumbarton Road, Bowling, G60 5AH ("the Applicant")**

**Mr Alan Fergusson, formerly of 19 Hamilton Drive, Erskine, PA8 6DA and now of 28 Anderson Road, Bishopton PA7 5EW ("the Respondent")**

**Tribunal Members:**

**Melanie Barbour (Legal Member) and Elizabeth Dickson (Ordinary Member)**

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

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

**Background**

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the 2017 Rules") seeking an order for payment of the deposit in relation to a tenancy for the Property together for compensation for the time and inconvenience caused.
2. The application contained ,
  - (a) a copy of the Tenancy Agreement of 5 June 2015
  - (b) a copy of the Tenancy Agreement of 5 May 2016
  - (c) termination letter
  - (d) redacted bank statements showing deposit paid
  - (e) emails confirming lack of deposit

- (f) emails from deposit schemes confirming no deposit paid into scheme
- (g) timeline
- (h) appendix

3. A case management discussion took place on 31 May 2019 reference is made to the terms of the case management discussion note.
4. The Applicant attended today's hearing with Maureen Walker as a supporter. There was no appearance from the First Respondent, Alan Fergusson or his representative Ms McCulloch. There was no appearance from the Second Respondent, Hugh Mulgrew. The tribunal was satisfied that the parties had had notice of today's hearing and we were prepared to proceed in their absence.

### Hearing

5. The Applicant confirmed that she was now only seeking an order against the First Respondent (Alan Ferguson). She considered as the First Respondent had become her landlord in June 2016, he had therefore taken over all responsibilities as landlord, including in terms of the tenancy deposit regulations and therefore he was responsible for her deposit. The tribunal agreed to amend the Respondent into the name of the First Respondent (Alan Fergusson) only.
6. The Applicant advised that she had originally entered into a tenancy with Hugh Mulgrew and that it had commenced on 5 June 2015. She stated that she had paid the tenancy deposit of £500 to Hugh Mulgrew. She had not received any notice from him as to where the deposit had been paid into. She referred to the bank statements she had lodged, showing that she had paid £100 as a holding deposit in February 2015 and then the remaining deposit £400 and first month's rent in June 2015 of £900.
7. The Respondent had purchased her tenancy in June 2016 from Hugh Mulgrew. The Respondent had taken over as her landlord for the Property at that time. She advised that she had received a telephone call from the Respondent's letting agents, Rent Locally who advised her that the Property had been sold; that there was no problem and her tenancy would just continue on.
8. She advised that in around June 2016 Rent Locally then contacted her and she was given online customer login, she went online, and she was asked to re-consent to her lease. She did this. She referred to an online print out she had produced with her application which referred to her lease pack. She advised that the lease that she re-consented to was the same lease she had previously entered into with the original landlord and his name had not been changed, however it was after he had sold the property to the Respondent.
9. She advised that she was not provided with any information about her deposit when she re-consented to the lease in June 2016.



10. In around March April 2018, her neighbour left her tenancy; she contacted the Applicant to advise that she was having a problem getting her tenancy deposit back. At that time the Applicant contacted the letting agent about this, and she received an email on 17 April 2018 from them, it advised that the deposit had not been transferred to them, when her current landlord took over the property. They advised her that the responsibility lay with the previous landlord and she should raise legal proceedings against him.
11. She advised that she felt concerned about her deposit. She was also concerned about what would happen to her security of tenure with the current landlord if and when she started trying to recover her deposit, and because of that she decided to look for somewhere else to live. She found a new flat and gave a notice to quit with a leaving date of January 2019.
12. She advised that she contacted the letting agents again, to try and get her deposit back and they advised that they had passed her correspondence on to the original landlord, Hugh Mulgrew.
13. She advised that she had contacted the letting agents about the notice to quit and arrangements for leaving the tenancy; she had merely been told where to leave the keys and was thanked for leaving the flat in good condition.
14. She advised that she understood that the letting agents had corresponded with Hugh Mulgrew to get her deposit back however she was not advised of the outcome of that correspondence.
15. She advised that as at today's date she has still not received the return of her deposit.

#### Findings in Fact

16. The tribunal found the following facts to be established :-
  - (a) That the lease had commenced on 5 June 2015.
  - (b) That the Applicant had paid Hugh Mulgrew the deposit sum of £500.
  - (c) That the Applicant had not had the deposit repaid to her after the tenancy ended.
  - (d) That on around 5 July 2016 ownership of the Property transferred from the Hugh Mulgrew to the Respondent (Alan Fergusson).
  - (e) That the Respondent became the landlord for the Property while the Applicant was a tenant.
  - (f) The Respondent did not enter into a new lease agreement with the Applicant.

- (g) The Respondent continued to rely on the original lease agreement already in place.
- (h) That the Respondent became the original landlord's successor in title and was the landlord of the Applicant.
- (i) That the lease agreement contained conditions dealing with the deposit, including that it would be placed in a government approved scheme and how it could be used by the landlord.
- (j) That the deposit had not been paid into an approved scheme.

### Reasons for Decision

17. The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits by Respondents for Applicants, and relevant to this case are the following regulations:-

3.—(1) 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.

...

- 18. Regulation 9 provides that a tenant who has paid a tenancy deposit may apply to the first tier tribunal for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.
- 19. Regulation 10 provides that if satisfied that the landlord did not comply with any duty in regulation 3 then the first tier tribunal — must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and may, as it considers appropriate in the circumstances of the application, order the landlord to— (i) pay the tenancy deposit to an approved scheme; or (ii) provide the tenant with the information required under regulation 42.
- 20. In coming to our decision we would confirm that we found that the Respondent is "the landlord" in respect of this tenancy and the requirements of the tenant deposit regulations therefore apply to him.
- 21. We had regard to the fact that the Tenancy Deposit Schemes (Scotland) Regulations 2011, regulation 2 defines certain terms one of which is "*Landlord*" and to work out what "*landlord*" means you are directed to the Housing (Scotland) Act 2006, of a relevant tenancy. The Housing (Scotland) Act 2006 Section 194 "Interpretation" defines landlord as "*any person who lets a house under a tenancy, and includes the landlord's successors in title.*" In the present case we



found the Respondent to be the landlord. He is the owner of the property; he has held himself out as the landlord; his letting agents confirmed that he was the new landlord; and he was relying on the old tenancy agreement entered into.

22. The tribunal found that that the deposit had not been placed into an approved scheme within 30 working days. Further, all of the prescribed information had not been provided to the Applicant. Therefore the terms of regulation 10 apply and we must make an order not exceeding three times the amount of the tenancy deposit.
23. In considering the penalty to impose we have regard to the fact that the Respondent should have been aware of his statutory duties. We consider it relevant that the Applicant's deposit was not protected throughout the entire course her tenancy from 2015 until she left in January 2019. We also consider it relevant that she has still not received repayment of it.
24. We consider it relevant that the letting agents acting for the new landlord had the Applicant "re-consent" to the lease agreement and therefore the Respondent cannot state he was not aware of the terms of that agreement and further that he was not relying on them. The lease agreement clearly sets out that a deposit was payable and that it would be put into an approved scheme.
25. We do not consider that the Respondent would not have known about the deposit. We consider that he should have made sure that he was aware of where it was held when he purchased the Property from Hugh Mulgrew. It is not clear what audit was done by the Respondent in 2016 of the deposit and what he was told by Hugh Mulgrew, however we do not consider that it should have to be of concern or relevant to the Applicant. We consider that she had a right to have her deposit put into an approved scheme no matter who her landlord was.
26. The Applicant was advised by the letting agents that she had to pursue Hugh Mulgrew and she made attempts to do so. This caused her inconvenience and wasted her time. We consider she was wrongly advised and did not have to pursue Mr Mulgrew as he was no longer her landlord. The Respondent should have dealt with her requests for her deposit when she asked about it.
27. We noted that the tenancy was left in good condition by the Applicant and it appears that there is no reason why it should not therefore have been repaid directly to her when she moved out. We consider that this must have caused her inconvenience.
28. We have taken into account that the Respondent did not receive the deposit when the Applicant first entered into the tenancy, and the original failure to put it into a scheme was not his doing. He may have believed that the deposit was still being held by Mr Mulgrew. We have limited information about his circumstances as a landlord, as the Respondent was not present to put forward any mitigation in this case.

29. Having regard to all of the factors as set out above, the verbal submission from the Applicant and the documents lodged with the Application, we find that the failure to pay the deposit into a scheme is a breach which continued for the duration of the Applicant's tenancy and even after it ended. We consider this to be a fairly serious breach of the regulations. Accordingly, we consider that compensation of two times the amount of the deposit to be fair and proportionate. We also consider that we should make an Order that the Respondent should now pay the deposit into an approved scheme and provide the Applicant with details of where her deposit is held, in order that she can then seek to recover it. We also order that the deposit be paid into the scheme with 14 days of the order being issued to the Respondent and that the Respondent is required to provide written confirmation to the Tribunal that the deposit has been put into an approved scheme.

### **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.**

Melanie Barbour

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**Legal Member/Chair**

24.7.19

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**Date**