

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber).**

**Chamber Ref: FTS/HPC/PR/18/0160**

**Re: Property at 123 Crewe Crescent, Edinburgh, EH5 2JN ("the Property")**

**Parties:**

**Mr Ritvars Skele, Flat 3, 13 Citypark Way, Edinburgh, EH5 2DE ("the Applicant")**

**Ms Julie Finlayson, 123 Crewe Crescent, Edinburgh, EH5 2JN ("the Respondent")**

**Tribunal Members:**

**Fiona Watson (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent shall make payment to the Applicant in the sum of ONE THOUSAND TWO HUNDRED POUNDS (£1200) STERLING**

- **Background**

An application was submitted to the First-tier Tribunal dated 15 January 2018 in terms of Rule 103. A Case Management Discussion took place on 11 April 2018. The Respondent was personally present along with her lay representative, Simon Forster. Prior to the commencement of the Case Management Discussion, the Respondent advised the Tribunal Clerk that she had emailed the Tribunal office with written submissions and also to advise that she intended to bring Mr Forster as a lay representative. The email had not reached the Legal Member prior to the Case Management Discussion. The Case Management Discussion was delayed in order to allow the Legal Member to consider the Respondent's submissions. The Applicant was not present at the commencement of the Case Management Discussion. The Legal Member proceeded with the Case Management Discussion in the Applicant's absence in terms of Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017.

- Case Management Discussion

The Respondent's representative made submissions that the Respondent was an inexperienced landlord. She had been letting the property concerned for around 3 years. Prior to the commencement of the Applicant's tenancy, the previous tenants had been a friend and a family member and no deposits had been taken in relation to those prior tenancies. Since the termination of the Applicant's tenancy, new tenants have moved in and their deposit has been lodged with a tenancy deposit scheme. The Respondent has taken legal advice since the termination of the Applicant's tenancy. The Respondent confirmed that her Landlord Registration number was 386787/230/08261 and that she had been registered with the City of Edinburgh Council as a landlord since February 2016.

The Respondent confirmed that her current address was 88 South Gyle Gardens, Edinburgh.

The Respondent's representative advised that the Respondent had "bent over backwards" to accommodate various requests by the Applicant, such as changing the start date of the tenancy, agreeing to a reduced period of notice of termination from the tenants and removing a double bed from the property to allow the tenants to use their own bed for their son. She had also replaced a washing machine which had broken down, within a few days.

The Respondent's representative advised that at termination of the tenancy, there was an issue of dampness within the bathroom and it was submitted that this was caused directly due to the Applicant's failure to adequately ventilate the room. The Respondent produced an estimate from DJ Clark Painters and Decorators dated 5 January 2018 for redecoration works to the property in the sum of £1303.75. She also submitted that the property was left unclean at termination of tenancy.

The Respondent advised that she received text messages from the Applicant on 12 December 2017 and 22 December 2017 for return of the deposit and she had advised them that she was awaiting assessment of damage and repairs costs before it could be returned. Thereafter the Applicant brought to her attention that she had failed to lodge the deposit in a scheme, and the full deposit was thereafter returned to the Applicant some 8 days following the termination date of the tenancy.

The Respondent advised that she has suffered financially as a result of her failure to lodge the deposit into a scheme, as if she had done so, she would have been able to seek redress through the scheme's dispute resolution mechanism.

The Respondent advised that the deposit was held for the duration of the tenancy in her partner's bank account.

The Tribunal adjourned the Case Management Discussion to consider the submissions by the Respondent. During that period of time, the Applicant appeared, having suffered a breakdown in his car. The Applicant was provided

with a copy of the Respondent's written submissions and given an opportunity to consider same.

The Case Management Discussion was re-convened and the Legal Member explained the process that had taken place up to that point. The Applicant was given an opportunity to respond to the Respondent's written submissions.

The Applicant submitted that he still hadn't been given a copy of the Tenancy Agreement. He stated that he had had to pay the sum of £130 of Council Tax to the Respondent directly at the commencement of his tenancy. He denied that the dampness in the property was his fault and submitted that the dampness was due to rising dampness within the fabric of the building itself and he had had a contractor attend at the property who had confirmed this. The Applicant advised that he had made efforts to carry out some re-decoration works in the property prior to his departure i.e. repainting in the living room and bedroom. The Applicant denied that the property was left unclean, and submitted that he and his partner had spent two days cleaning prior to their departure.

The Applicant advised that he had taken advice from Shelter Scotland in relation to the Respondent's failure to lodge his deposit with a tenancy deposit scheme. He advised that his deposit was repaid in full 10 days following termination of the tenancy, but only after he had threatened to take the landlord to the court.

- Findings in Fact

The Applicant paid a deposit of £600 to the Respondent at the commencement of the tenancy.

The tenancy commenced on 3 April 2016.

The Tenancy terminated on 10 December 2017.

The Respondent failed to lodge the tenancy deposit of £600 into a tenancy deposit scheme as is required under Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (hereinafter referred to as "the Regulations"). The Respondent admitted that as a direct consequence of this failure, she had also failed to provide the prescribed information required under Regulation 42 of the Regulations.

In terms of Regulation 10 (a) of the Regulations, the First-tier Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.

- Reasons for Decision

It is a Landlord's duty to ensure that they take all necessary steps to comply with the legal framework concerning letting a property in the private rented sector in Scotland. Ignorance of the existence of the Regulations is not a defence to the Application at hand, nor is it a mitigating factor.

The deposit of £600 remained unprotected for a period 20 months. This is a prolonged period of time, which the Tribunal considered to be a serious breach. By failing to lodge the deposit with a tenancy deposit scheme, the Respondent has denied either party the chance of entering into the scheme's dispute resolution mechanism to determine deposit disputes. The Tribunal did not consider it a mitigating factor that the Respondent claimed that she had suffered financially as a result of failure to lodge the deposit into a scheme. The tenant has also suffered the inability to have his dispute as to the landlord's contentions regarding the state of the property at termination of tenancy to be determined by a free of cost scheme arbitration mechanism.

The Regulations were introduced to address a perceived problem with landlords in the private sector retaining tenancy deposits at the end of tenancies and failing to return them, without any lawful basis for retention. Prior to the commencement of the Regulations, a tenant's recourse where a deposit had been retained without due lawful basis, was to raise an action in the Sheriff Court to seek repayment, which gave rise to costs to the tenant. The Regulations are designed to ensure that deposits are securely held, and where there is a dispute as to the retention of the deposit, that both parties have access to a free of cost arbitration service.

Due to the Respondent's disregard for the Regulations, the protection of the Applicant's deposit has been denied to the Applicant for a period of 20 months.

What was of additional concern to the Tribunal was that the deposit was held for that period of time in the Respondent's partner's bank account, an account over which the Respondent had no control herself, and which the Tribunal considered added to the risk.

The Tribunal did not consider the Respondent's submissions that she had "bent over backwards" to assist the tenant as at all relevant. The Respondent chose to allow start date and ends dates to be altered, and her fixing of the washing machine was something she was legally obliged to do in terms of the repairing standard under the Housing (Scotland) Act 2006 in any event. The Tribunal also did not consider the Respondent's submissions regarding the state of the property at termination of tenancy (and which was denied by the Applicant) to be of any relevance either. The Landlord is in breach of the Regulations and they cannot attempt to mitigate their own conduct by reference to the alleged conduct of the tenant.

Whilst the Respondent submitted that she was inexperienced and lacked knowledge regarding the Regulations, all landlords must comply with the Regulations whether they are experienced or otherwise.

The Tribunal acknowledged that the deposit was repaid in full to the Applicant shortly after the termination of the tenancy and on that basis the Tribunal did not consider it appropriate to make an Order for payment at the highest end of the scale. However, it must be taken into account that the deposit was unprotected for a period of 20 months, and further was held in an account over which the Respondent herself had no control.

- **Decision**

An Order for payment is granted in the sum of ONE THOUSAND TWO HUNDRED POUNDS (£1200) STERLING against the Respondent.

**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.**

F Watson

**Legal Member/Chair**

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**Date**

11/4/18.