



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 and Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/20/1850**

**Re: Property at 51/2 Clerk Street, Edinburgh, EH8 9JQ (“the Property”)**

**Parties:**

**Ms Nia Allen-Cooper, 373 Church Street, London, N9 9HY (“the Applicant”)**

**Mr Tahir Ali, 1 East Newington Place, Edinburgh, EH9 1QP (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent had failed to comply with the requirements of Regulation 3 of the Tenancy Deposit Schemes (Scotland) regulations 2011 and made an Order for Payment by the Respondent to the Applicant of the sum of £1,600.**

**Background**

By application, received by the Tribunal on 1 September 2020, the Applicant sought an Order for Payment in respect of the failure of the Respondent to lodge a deposit in an approved Tenancy Deposit Scheme, as required by the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”).

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing 7 September 2019 at a monthly rent of £800 and with a deposit of £800, and by copies of emails and text messages between the Parties. These included an email to the Respondent of 3 June 2020 in which the Applicant asked if the deposit was protected, as My Deposits Scotland had told her they did not hold it, and a text from the Respondent on the same day, requesting a home address for the Applicant so that he could lodge the deposit that day. The Applicant also provided the Tribunal with a copy of an email from My Deposits Scotland dated 4 June 2020 confirming that the deposit of £800 had been lodged with them.

Later that day, the Applicant gave the Respondent notice of her intention to end the tenancy. The copy emails included one from the Respondent dated 15 July 2020 which stated that he was about to release the deposit from My Deposits Scotland but would be making deductions of £182.62. He provided a breakdown of this figure.

On 15 September 2020, the Tribunal advised the Parties of the date and time for a Case Management Discussion and the Respondent was invited to make written representations by 6 October.

The Respondent made written representations to the Tribunal in which he accepted that the deposit paid by the Applicant had not been paid into an approved scheme within 30 days, and that he was in breach of the 2011 Regulations. By way of mitigation, he asked the Tribunal to take into account the fact that he did pay the deposit into My Deposits Scotland on 4 June 2020 and had returned the full deposit to the Applicant. The Applicant had not suffered any loss as a result of the Respondent's failure. The Respondent had reasonably assessed the value of reductions from the deposit to be £155.95, but had not made any reductions, in an effort to bring about resolution of the matter. He added that he had no record of the Applicant having paid the rent due for November 2019 and that the arrears should be factored into any decision of the Tribunal.

### **Case Management Discussion**

A Case Management Discussion was held by means of a telephone conference call on the morning of 14 October 2020. The Applicant participated in the call. The Respondent was not present, but was represented by Mr Douglas Harvey of Thorley Stevenson solicitors, Edinburgh. Mr Harvey said that the Respondent regretted his failure, but asked the Tribunal to take into account the written submissions and in particular the fact that the Applicant had not been prejudiced by the Respondent's failure to lodge the deposit until 4 June 2020. The Applicant responded to the Respondent's written submissions by telling the Tribunal that the decision to refund the full deposit had not been a concession by the Respondent, but had been the outcome of an adjudication by My Deposits Scotland, as the Respondent had provided no evidence of his claim that deductions should be made from it. She also stated that, so far as she knew, she had paid all the rent that had been due by her.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides 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 and documentation it required to enable it to decide the application without a Hearing.

Regulation 3 of the 2011 Regulations states that 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, pay the deposit to the scheme administrator of an approved scheme and must provide the tenant with certain information required under Regulation 4.2 of the 2011 Regulations. Regulation 10 of the 2011 Regulations provides that, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.

The Tribunal considered all the information before it. The tenancy commenced on 7 September 2019, but the deposit was not lodged until 3 or 4 June 2020. The Tribunal noted that the Respondent stated that he had agreed to the reimbursement of the full

deposit, but that was not before he had indicated his intention, in an email of 15 July 2020, to seek a reduction of £182.62, later modified to £155.95. The Tribunal also noted the comment of the Applicant that it was the tenancy deposit company's adjudication, not a concession on the part of the Respondent, that had resulted in the deposit being refunded in full.

The Tribunal decided, on the balance of probabilities, that the Respondent had not, at the outset at least, asked the tenancy deposit company to reimburse the full deposit to the Applicant. His email of 15 July 2020 made it clear that he intended that a number of deductions should be made. The Tribunal was not privy to the correspondence that had passed between the Parties and My Deposits Scotland or to the reasoning behind their adjudication.

The Tribunal noted that the Applicant had not suffered any actual loss, and took this into account in deciding the amount that the Respondent should be ordered to pay, but the fact remained that the Applicant's money had been at risk for more than 9 months. The view of the Tribunal was that the Respondent's failure was a serious one. The Tribunal regarded it as irrelevant to its decision on the breach of the 2011 Regulations that the Respondent could not trace receipt of the rent for November 2019. This was a matter that could and should have been put to My Deposits Scotland for adjudication at the time.

Having considered carefully all the representations, written and oral, before it, and taking into account the fact that the deposit had been reimbursed in full, the Tribunal decided that a fair, just and proportionate sum to order the Respondent to pay to the Applicant was £1,600.

### **Decision**

The Tribunal determined that the Respondent had failed to comply with the requirements of Regulation 3 of the Tenancy Deposit Schemes (Scotland) regulations 2011 and made an Order for Payment by the Respondent to the Applicant of the sum of £1,600.

### **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.**

George Clark

14 October 2020

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Legal Member/Chair

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Date