



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Regulations 3 and 10 of the Tenancy  
Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/21/1200**

**Re: Property at Sandyknowe, St Andrew's Walk, Fortrose, IV10 8TP ("the  
Property")**

**Parties:**

**Mr Thomas Shemeld, Sandyknowe, St Andrew's Walk, Fortrose, IV10 8TP ("the  
Applicant")**

**Blackbridge Furnishings Ltd, 42B Thornbush Road, Inverness, IV3 8AB ("the  
Respondent")**

**Tribunal Members:**

**Alison Kelly (Legal Member)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined that an order for payment in the amount of Three Hundred  
and Seventy-Five Pounds (£375) should be made.**

**Background**

On 19<sup>th</sup> May 2021 the Applicant lodged an Application with the Tribunal under Rule 103 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 ("The Rules"), seeking an order for payment, alleging that the Respondent had not lodged the tenancy deposit in an approved scheme in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Lodged with the application were: -

1. Copy Tenancy Agreement with the rental period beginning on

The Application was served on the Respondents by Sheriff Officers on 10<sup>th</sup> August 2021.

The Respondents lodged a written submission on 16<sup>th</sup> August 2021. Said submission admitted the breach and put forward mitigation. They said that their main business was the supply and sale of furniture. They said that the part time employee who normally dealt with their tenancies had been diagnosed with cancer in late 2020. She had therefore been unable to continue with her duties in managing the tenancies. The company secretary then took over. The Applicant rented the property in April 2021. This coincided with the reopening of the Respondent's retail premises and the company secretary was involved heavily in the logistics of restocking and opening the shops. In June 2021 she realised that the deposit had not been lodged and she took immediate steps to do so.

### **Case Management Discussion**

The Case Management Discussion ("CMD") took place by teleconference. The Applicant attended and represented himself. The Respondent was represented by Mr McKenzie, Solicitor. The Chairperson introduced everyone and confirmed the purposes of a CMD in terms of the Rule 17 of the Rules.

The Chairperson confirmed with the Applicant that the tenancy had commenced on 1<sup>st</sup> April 2021, and that he still lived in the property. He accepted that the deposit had been lodged in a scheme in June 2021. He confirmed that he had read the Written Submission lodged on behalf of the Respondent and could make no comment regarding the truth of the contents. He had nothing further to add in relation to the tenancy deposit.

Mr McKenzie adopted the Written Submissions. He said that he had nothing to add apart from to focus on the point that the Respondents had put things right in June 2021, before they had received service of the Application. They had not been prompted; they had realised their error. The Chairperson confirmed with the Applicant that he had not made any direct approach to the Respondent regarding the deposit not having been placed in a Scheme. The Chairperson accepted that he had no duty to do so.

Neither party had anything further to add.

### **Findings In Fact**

1. The parties entered in to a tenancy agreement for the rental of the property, commencing 1<sup>st</sup> April 2021;
2. The Applicant paid the Respondent a deposit of £750;
3. The Respondent did not pay the deposit in to an approved scheme within 30 working days of the beginning of the tenancy;

4. The Respondent paid the deposit to SafeDeposits Scotland on 14<sup>th</sup> June 2021.

## Reasons For Decision

Rule 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“TDS”) states:

*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.*

*(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.*

*(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—*

*(a) in respect of which the landlord is a relevant person; and*

*(b) by virtue of which a house is occupied by an unconnected person,*

*unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.*

*(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.*

The tenancy began on 1<sup>st</sup> April 2021. The deposit was not lodged until 14<sup>th</sup> June 2021. The Respondents had clearly breached the regulation and accepted that in their Written Submission.

Rule 10 gives the Tribunal power to impose a sanction of up to three times the amount of the deposit. The amount is at the discretion of the Tribunal. The Tribunal must consider the seriousness of the breach. The Tribunal did not consider this breach to be at the serious end of the spectrum. The deposit was put in to the

Scheme on 14<sup>th</sup> June 2021. This was done without any prompting from the Applicant. The duty is to place it in a scheme within 30 working days of the commencement of the tenancy. There were approximately 49 working days between the two dates, taking in to account weeks and bank holidays, meaning it was unprotected for around three weeks. There were also mitigating circumstances in relation to illness and the pandemic. The Respondents, however, were holding money which did not belong to them and required to be accounted for. The Tribunal decided to award one half of the amount of the deposit.

### **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.**

Alison Kelly

09 September 2021

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Legal Member/Chair

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Date