



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

**Chamber Ref: FTS/HPC/PR/21/1296**

**Re: Property at 3/2, Room 2, 281 Sauchiehall Street, Glasgow, G2 3HQ (“the Property”)**

**Parties:**

**Mr Chiedozie Okorie, Flat 5/4, 15 Clarendon Street, Glasgow, G20 7QP (“the Applicant”)**

**Lets Direct (Southside) Ltd, 605 Cathcart Road, Glasgow, G42 8AD (“the Respondent”)**

**Tribunal Members:**

**Karen Kirk (Legal Member)**

**1. Introduction**

2. This Hearing was a Case Management Discussion (hereinafter referred to as a “CMD”) fixed in terms of Rule 17 of the Procedure Rules and concerned an Application under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (hereinafter referred to as “the Deposit Regulations”). The purpose of the Hearing being to consider an application for Recall lodged by the Respondent on 29<sup>th</sup> July 2021.
3. A CMD previously took place in this case on 26<sup>th</sup> July 2021. The Applicant was present and unrepresented. The Respondent was not present and unrepresented. Service had been effected successfully by the Tribunal on the Respondent. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £430 in terms of Regulation 10(a) of the Regulations should be made. This Order was made in the absence of the Respondent.
4. The Tribunal in consideration of the Application for Recall considered that a further CMD be fixed to determine whether the decision should be recalled.

## **2. Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) recalled the Decision of the Tribunal dated 26<sup>th</sup> July 2021 and of new having heard parties determined that an order for payment of the sum of £217 in terms of Regulation 10(a) of the Regulations should be made.**

## **3. Attendance and Representation**

The Applicant was present and unrepresented.

The Respondent was represented by Mr Iqbal from Lets Direct.

## **4. Preliminary Matters**

The Tribunal made clear the purpose of the CMD which was to determine firstly whether the application for Recall made by the Respondent should be allowed and if appropriate thereafter to determine the Application if the Tribunal consider the decision should be recalled. Parties were in agreement to this course.

## **5. The Case Management Discussion**

- The Respondent set out his position firstly seeking recall and thereafter advising on what he wished the Tribunal to take into account if a Recall was allowed. The position taken is summarised as follows;
  1. The Respondent set out that he was unable to attend the last hearing as he was self-isolating. He said he had severe covid, had lost voice, could not breath and at aged 51 years was concerned for her health. He had been struck by the symptoms over the weekend and could not attend and contact the Tribunal. No written representations had been received.
  2. The Respondent thereafter made clear that the facts were agreed namely that the deposit itself was not lodged timeously by the Respondent and was 23 days late.
  3. The Respondent's was that the deposit had been paid prior to the first lockdown in the covid-19 pandemic. Thereafter the lockdown occurred on 23<sup>rd</sup> March lockdown and all staff were told you that they could into come to work. His position was that this affected their work dramatically and this was why the deposit was late. He described the situation at the time in terms of the Respondent's work practices being severely affected.
  4. The Respondent's position was that other services such as GP's local authorities and others were allowed not to comply with rules due to covid but letting agencies were in a different position. He said it was not months that the delay occurred.

- The Applicant set out his position fully requesting that the Tribunal refuse the Recall and allow the Decision to stand, the Applicant's position was as follows;
  1. The Applicant said he paid the deposit on 12<sup>th</sup> March 2020 and he said that deposit protection was not disrupted by covid as he had contacted Safe Deposit Scotland who he said were still receiving deposits in the lockdown.
  2. The Applicant said that if Safe deposit Scotland was still receiving deposits he could not understand why the Respondent did not why pay in his.

### **Findings in Fact and Reasons for Decision**

1. In terms of Rule 30 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure)(Regulations) 2017, the Tribunal may in respect to a Recall application grant same, refuse same or fix a CMD to consider whether to Recall.
2. The Tribunal considered it needed further information to determine the application for Recall in terms of Rule 30. The Respondent was able to provide clear reasons for his non-attendance at the Hearing. There was an attempt to contact the Tribunal to advise of this but this was after the Hearing took place. The Tribunal was provided further information and in their discretion having heard parties and the reasons given determined it was in the interests of justice that a recall be made.
3. Thereafter the Tribunal determined of new in terms of the overriding objective the Tribunal to deal with matters justly and proportionately in terms of the complexity
4. On balance that it was appropriate to determine that an order for payment of the sum of £217 in terms of Regulation 10(a) of the Regulations should be made. Parties were in agreement that as the facts were not in dispute following the attendance for the Respondent no further information could be made available to the Tribunal in any further hearing. Parties were agreeable to the Tribunal determining both the Recall and if granted the application of new based on the representations made and heard.
5. The Application was brought timeously in terms of regulations 9(2) of the Deposit Regulations. This was not disputed.
6. In terms of Deposit Regulation 10 if the FTT is satisfied that the landlord did not comply with any duty detailed in Regulation 3 then the FTT must order a landlord to pay the tenant or tenants an amount not exceeding three times the amount of the tenancy deposit.

7. The FTT was satisfied that the Respondent did not register the deposit with a deposit protection scheme as required by Regulation 3. This was a matter of agreement.
8. The FTT was also satisfied that a deposit had been paid by the Applicant to the Respondent due to the various evidence lodged by the Applicant. This was not in dispute.
9. If the FTT was satisfied a breach of the regulations had occurred the FTT had to make an order in terms of Regulation 10.
10. In terms of Regulation 10 the FTT is obliged to make an order up to 3 times the deposit of the applicants to the respondent.
11. When considering the Order and level of sanction the FTT must have regard to the severity of the breach and any mitigating factors.
12. The deposit was unsecured for a period of around 23 days working and 38 days non-working from the date of the tenancy. This was a matter of agreement.
13. In the case of *Jenson v Fappiano* 2015 G.W.D 4-89 in relation to the amount of such an Award under regulation 10 of the Regulations it was noted that a judicial analysis of the nature of the non-compliance was required and a value attached to reflect a sanction which was fair and proportionate and just given the circumstances.
14. It was further noted that the Sheriff said in said case that the value was not the starting point of three times the deposit minus the mitigating factors it was what was fair and proportionate in the exercise of balanced judicial discretion.
15. The Court of Session in *Tenzin v Russell* 2015 Hous. L.R 11 held that any payment in terms of Regulation 10 of the Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.
16. The FTT was therefore of the view that an Award should be made in the lower end of the scale as had been the case in its earlier decision. This was because the deposit had been late but not throughout the tenancy. However having heard the Respondent in full and the representations made that the delay was in connection with the pandemic and the detailed circumstances regarding directly from the Respondent the Tribunal in balancing the interests of both parties determined in its discretion that the Applicant was entitled to an award of one third of the initial deposit to the sum of £216.

## **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.**

Karen Kirk

3 November 2021

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**Legal Member/Chair**

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**Date**