

**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) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/23/1688**

**Re: Property at Flat 3/1, 200 Battlefield Road, Glasgow, G42 9HN (“the Property”)**

**Parties:**

**Miss Michaela Pointon, Flat 37 Labyrinth Tower, Dalston Square, London, E8 3GP (“the Applicant”)**

**Clydesdale Securities Co Ltd, 350 Glasgow Harbour Teraces, Glasgow, Lanarkshire, G11 6EG (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be dismissed.**

**Background**

1. The application was received on 24<sup>th</sup> May 2023. The Applicant was seeking compensation against the Respondent in relation to alleged failure to lodge a tenancy deposit of £892.50 with an approved tenancy deposit scheme. The deposit was paid on 11<sup>th</sup> January 2021, the start date of the private residential tenancy between the parties in respect of the Property. The Applicant lodged a copy of the tenancy agreement, correspondence from the letting agent dated 11<sup>th</sup> January 2021 stating that the deposit had been lodged with My Deposits Scotland, a Safe Deposits Scotland deposit certificate showing the deposit lodged on 24<sup>th</sup> February 2023, confirmation of payment the deposit, and evidence of the end of tenancy on 28<sup>th</sup> February 2023.
2. A Direction was issued dated 30<sup>th</sup> May 2023 in the following terms:

The Applicant is required to provide:-

Clarification of whether she believes the tenancy deposit which was originally deposited at the start of the tenancy with My Deposit Scotland

was not protected all through the tenancy and if so to confirm when she believes the tenancy deposit was unprotected and for how long and to provide any evidence to support this. The said documentation should be lodged with the Chamber no later than close of business on 30<sup>th</sup> June 2023.

### **Reasons for Direction**

It is noted that the Applicant has shown evidence that the deposit was lodged with My Deposits Scotland on 25<sup>th</sup> January 2021. The Applicant appears to be alleging the deposit was not protected during the whole course of the tenancy as it was transferred later to Safe Deposit Scotland. The Applicant has only lodged her application shortly before the time limit for of 3 months after the end of the tenancy, and the Tribunal has therefore accepted the application as otherwise it would be timebarred, but is not clear if there is any time or for how long the deposit has not been protected. The Tribunal requires the Applicant to clarify her application and the exact nature of the breach she is claiming.

3. The Applicant failed to respond to the Direction.
4. By email dated 27<sup>th</sup> July 2023, the Applicant stated that she had discovered that the deposit has been protected and had been moved between tenancy deposit schemes. The Applicant asked if her case was valid and if she was required to produce further evidence.
5. By email dated 28<sup>th</sup> July 2023, the Respondent lodged written representations, documentation and a timeline showing a change of letting agent during the tenancy, and the transfer of the tenancy deposit between approved schemes. This confirmed that the deposit was protected throughout the tenancy.
6. On 4<sup>th</sup> August 2023, the Applicant was informed as follows:

The Rule 103 case can only proceed if the tenancy deposit was not placed in an approved tenancy deposit scheme within 30 working days of the start date of the tenancy. If it is now your position that the tenancy deposit was lodged timeously, then you should withdraw the case. If the deposit was not returned to you, and you wish to make an application in that regard, please see our website for the appropriate form.

7. By email dated 18<sup>th</sup> August 2023, the Applicant asked whether the case could proceed without her or whether she was required to attend. The Applicant was informed that she was not compelled to attend, but that the case was likely to be dismissed in her absence as there appeared to be no legal basis to it. The Applicant was advised it was in her interests to appear if she wished to put forward a legal basis for her case.

8. By email dated 22<sup>nd</sup> August 2023, the Applicant stated she would not be present at the Case Management Discussion set down for the following day.

### **The Case Management Discussion**

9. A Case Management Discussion (“CMD”) took place by telephone conference on 23<sup>rd</sup> August 2023. The Applicant was not in attendance. The Respondent was represented by Mr Robert Nixon.
10. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Applicant.
11. Mr Nixon confirmed the terms of his written representations and documentation, stating that the deposit had been protected throughout the tenancy. The estate agency had changed and the deposit had been transferred between deposit schemes.
12. The Tribunal decided to dismiss the application.

### **Reasons for Decision**

13. There was no legal basis to the application, given that the tenancy deposit had been lodged timeously and remained protected throughout the tenancy. The Tribunal noted that the Applicant did not dispute that fact. The Tribunal considered it unfortunate that the Applicant did not withdraw the application when it became clear to her that there was no legal basis to the application. Instead, she allowed the application to proceed to a CMD at public expense and inconvenience to the Respondent.

### **Decision**

14. The application is dismissed.

### **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.**

**Helen Forbes**

**Legal Member/Chair**

**Date: 23<sup>rd</sup> August 2023**