



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

**Chamber Ref: FTS/HPC/PR/20/1189**

**Re: Property at Flat D, 294 Union Grove, Aberdeen, AB10 6TP (“the Property”)**

**Parties:**

**Miss Faye Woods, 1/2, 11 Dorchester Avenue, Glasgow, G12 0EG (“the Applicant”)**

**Mr Robert Cantly, 11 Sunnyside Lane, Drumoak, Banchory, AB31 5EJ (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £780 should be made in favour of the Applicant.**

**Background**

1. By application received on 21 May 2020 the Applicant seeks an order in terms of Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and Regulation 9 of the 2011 Regulations. The Applicant lodged a copy private residential tenancy agreement and email from Safe Deposit Scotland in support of the application. The tenancy agreement states that a deposit of £520 is payable before the start date of the tenancy, 9 September 2019. The email from Safe Deposit Scotland states that the deposit of £520 was lodged with them on 27 April 2020.
2. On 28 July 2020, a copy of the application and supporting documents were served on the Respondent by Sheriff Officer. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 19 August at 2pm

by conference call. Parties were provided with the telephone number and passcode.

3. On 12 August 2020, the Respondent sent written submissions to the Tribunal. He provided some background information in relation to the tenancy. He explained that his letting agent was only responsible for finding the tenant and thereafter he took over the management of the tenancy. He said that the failure to lodge the deposit within 30 days of the start of the tenancy was because he had forgotten and that he had arranged to lodge it with a tenancy deposit scheme, as soon as he realised his mistake. This had been after the Applicant gave notice to terminate the tenancy.
4. On 19 August 2020 at 2pm, the application called for a CMD. Both parties participated.

### **Case Management Discussion (CMD)**

5. The parties are agreed as to the relevant facts. These are; -
  - (i) The tenancy started on 9 September 2020 and a deposit of £520 was paid by the Applicant to the Respondent's letting agent prior to that date.
  - (ii) The Applicant gave the Respondent notice to leave on 26 April 2020 and the tenancy came to an end on 23 May 2020.
  - (iii) The deposit of £520 was not lodged in an approved tenancy deposit scheme until 27 April 2020
6. Ms Woods advised the Legal Member that she had been advised by Safe Deposits Scotland that, as her deposit had not been lodged until April 2020, she could apply to the Tribunal for a payment order. She had assumed that her deposit had been protected throughout the tenancy. She stated that her application for three times the deposit was on the basis that it had not been secured for nearly 8 months and was only secured for the last 4 weeks of the tenancy. In response to questions from the Legal Member she confirmed that she had received part of her deposit back, through Safe Deposit Scotland's adjudication process.
7. Mr Cantly advised the Legal Member that he thought the award should be restricted to no more than the amount of the deposit. He stated that the failure to lodge the deposit had been a genuine error. As soon as he had realised the error, when Ms Woods had enquired about the deposit and where it was lodged, he had rectified his mistake and immediately lodged the deposit in a scheme. He had not profited from the failure and Ms Woods had not been prejudiced by the mistake, as the deposit was secured for the last month of the tenancy. Furthermore, she was able to apply to the scheme for her deposit back at the end of the tenancy. Mr Cantly also advised that he is not in business as a landlord. He only lets out one property and used to live there. In response to questions by the Legal Member, Mr Cantly confirmed that although he only has

one property, he has rented it out for a number of years. He stated that he does not believe that he has ever forgotten before to lodge a tenant's deposit.

### **Findings in Fact**

8. The Applicant is the former tenant of the property in terms of a private residential tenancy agreement.
9. The Respondent is the owner and landlord of the property.
10. The Applicant paid a deposit of £520 prior to the start of the tenancy on 9 September 2019.
11. The tenancy terminated on 23 May 2020.
12. The deposit was lodged by the Respondent in a tenancy deposit scheme on 27 April 2020.

### **Reasons for Decision**

13. Regulation 3 of the 2011 Regulations states –

“(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.

(1A) Paragraph (1) does not apply –

- (a) Where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and
- (b) The full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord,

Within 30 working days of the beginning of the tenancy.

14. The Legal Member is satisfied that the Applicant's tenancy is a relevant tenancy in terms of the 2011 Regulations, that a deposit of £520 was paid and that it was not lodged in an approved deposit scheme until 27 April 2020, some seven and a half months after the beginning of the tenancy. The Legal Member also notes that the application was lodged with the Tribunal on 21 May 2020, two days before the tenancy ended. The Applicant has therefore complied with Regulation (9)(2) of the 2011 Regulations, which requires an application to be lodged no later than 3 months after the tenancy had ended.

- 15.** Regulation 10 of the 2011 Regulations stipulates that if the Tribunal is satisfied that the landlord did not comply with a duty in terms of regulation 3, it “ (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.” The Legal Member therefore determines that an order must be made in favour of the Applicant.
- 16.** The Legal Member noted that the tenancy deposit was not secured in an approved scheme for seven and a half months. It was not lodged until the Applicant gave notice to leave and enquired about the location of the deposit. Had she not done so, it appears likely that the tenancy would have ended without the deposit being lodged in a scheme, as the Respondent concedes that he only took the necessary steps once the applicant had raised the matter with him. Furthermore, although he only lets out one property, the Respondent is not inexperienced and was aware of his responsibilities regarding the deposit. On the other hand, the Legal Member accepts that the failure does appear to have been a genuine oversight, and the deposit had been secured by the time the tenancy ended. This meant that the issue of repayment of the deposit could be dealt with by Safe Deposits Scotland.
- 17.** Having considered the submissions made by both parties, the Legal Member is satisfied that an order for payment of the sum of £780, being one and a half times the deposit, should be made.

## **Decision**

- 18.** The Tribunal determines that an order for payment of the sum of £780 should be made in favour of the Applicant.

## **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.**

**Josephine Bonnar**

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**Josephine Bonnar, Legal Member**

**19 August 2020**