



**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/19/3534**

**Re: Property at 7/2, East Pilton Farm Place, Edinburgh, EH5 2QR (“the Property”)**

**Parties:**

**Ms Krystyna Klyta, Ms Julia Wolniak, 18/10 Beaverhall Road, Edinburgh, EH7 4JE; 17/4, Wester Drylaw Place, Edinburgh, EH4 2TN (“the Applicants”)**

**Mrs Sana Maqsood, Unknown, Unknown (“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 £700 should be made in favour of the Applicants.**

**Background**

1. By application received on 4 November 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 certificate from Safe Deposit Scotland in support of the application. The tenancy agreement states that a deposit of £1000 is payable before the start date of the tenancy, 1 November 2018. The certificate from Safe Deposit Scotland states that the deposit of £1000 was lodged with them on 30 January 2019.
2. On 8 July 2020, the application was served by advertisement on the Tribunal website, as the address of the Respondent was unknown. The Respondent contacted the Tribunal and a copy of the application was served by email on 17 July 2020. All parties were advised that a Case Management Discussion

("CMD") would take place on 5 August 2020 by conference call.

3. On 28 July 2020, the Respondent submitted written representations to the Tribunal together with a number of documents. The application called for a case management discussion ("CMD") on 5 August 2020. All parties participated by conference call. Following discussion, the Legal Member adjourned the CMD to allow the Respondent to take legal advice.
4. The application called for a further CMD on 22 September 2020. All parties participated.

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

5. The Legal Member noted that the parties had confirmed, at the previous CMD, that the following facts are agreed; -
  - (i) The tenancy started on 1 November 2018 and a deposit of £1000 was paid by the Applicants to the Respondent before this date.
  - (ii) The tenancy terminated on 9 August 2019.
  - (iii) The deposit of 1000 was lodged with Safe Deposit Scotland on 30 January 2019.
6. The Applicants advised the Legal Member that they were seeking an award of three times the deposit, as outlined in the application.
7. Mrs Maqsood referred the Legal Member to the written submissions previously submitted, and stated that the Tribunal should make no award, or a minimal award in favour of the Applicants. She asked the Legal Member to take the following into account –
  - (i) She was aware of the requirement to lodge the deposit in an approved scheme. She registered with Safe Deposit Scotland before the start of the tenancy. They notified her on 4 November 2018 that they had not received the deposit. She then took steps to transfer the funds from her account to Safe Deposits Scotland. There was no acknowledgement, but she assumed it had gone through.
  - (ii) Between 2 and 22 January 2019 she was out of the country, attending the funeral of her grandmother. Following her return, she checked her bank account and noticed that the deposit funds were still there. On 30 January 2019, she successfully transferred the money to the scheme and a certificate was issued confirming this.
  - (iii) She accepts that there has been a breach of the regulations because the deposit was not actually lodged until 30 January 2019, but it was unintentional.

- (iv) She is not a professional landlord. This was her first experience of letting out property. The property had previously been her home. She no longer lets it out and has now sold it.
  - (v) She was suffering from post natal depression at the relevant time, and suffered from a close family bereavement, her grandmother.
  - (vi) She regrets the failure to lodge the deposit in a scheme and advised that she took steps to rectify the situation as soon as she became aware of it. The Applicants were not prejudiced by her failure. They did not contact her to ask whether it had been deposited, so were unaware.
  - (vii) The deposit was lodged less than 2 months after the deadline for lodging.
8. The Respondent advised that she felt that the request for three times the deposit is disproportionate to the breach which has occurred. She feels that the Applicants are motivated by malice and pointed out that they did not make the application to the Tribunal when they became aware of the late lodging, but after the tenancy ended. They did not get all their deposit back through the scheme adjudication process, and she feels that this may have led to them deciding to make the application. The Respondent referred the Legal Member to mediation which took place with Living Rent in relation to tenancy related matters, including the end date of the tenancy, and to an agreement which was reached with the Applicants. She advised that the agreement which was eventually reached included an undertaking that the Applicants would not make an application to the Tribunal under Rule 103, although she did not seek to persuade the Legal Member that this in any way personally barred the Applicants from making the application. She did however feel that they had misled her. She referred to antisocial behaviour and unauthorised subletting having taken place during the tenancy.
9. Ms Klyta spoke on behalf of both Applicants. She stated that a high award is justified as the deposit was not lodged with an approved scheme on time. She pointed out that it is not enough for a landlord to register with a scheme, they must then lodge the deposit with it. She advised that they had contacted the Respondent in December 2018 to ask if all was in order with their payments but did not get a response. In response to questions regarding this message, the Applicants confirmed that the message did not mention the deposit specifically and it had rather been a general message to check all was well with the tenancy related payments. Both Applicants advised that the late lodging of the deposit has caused them stress and advised that, until they received confirmation from Safe Deposit Scotland, they did not know where the money had gone.
10. The Applicants advised that they sought advice from Living Rent when they were having difficulty communicating with the Respondent. They felt she lied about the reasons for wanting them to move from the property, saying she wanted to move back in when in fact she let it out as a holiday let during the festival, and then sold it. They were also concerned that she had provided Safe

Deposit Scotland with incorrect email addresses for them, which delayed the return of the deposit.

### **Findings in Fact**

11. The Applicants are the former tenants of the property in terms of a private residential tenancy agreement.
12. The Respondent is the owner and landlord of the property.
13. The Applicants paid a deposit of £1000 prior to the start of the tenancy on 1 November 2018.
14. The tenancy terminated on 9 August 2019
15. The deposit was lodged by the Respondent in a tenancy deposit scheme on 30 January 2019.

### **Reasons for Decision**

16. 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.

17. The Legal Member is satisfied that the Applicant’s tenancy is a relevant tenancy in terms of the 2011 Regulations, that a deposit of £1000 was paid and that it was not lodged in an approved deposit scheme until 30 January 2019, two months after the beginning of the tenancy. The Legal Member also notes that the application was lodged with the Tribunal on 5 November 2019, less than three months after the tenancy ended. The Applicant has therefore complied with Regulation (9)(2) of the 2011 Regulations.

18. 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 Applicants.
19. The Legal Member notes that the tenancy deposit was not secured in an approved scheme for two months. The Respondent’s explanation for this was not disputed by the Applicants. The Respondent has also provided evidence that she was abroad, in Pakistan, for a large part of January 2019, although this only accounts for three weeks of the three months that the deposit was in her possession, before it was lodged. The Legal member also notes that the lodging of the deposit at the end of January 2019 was not the result of an enquiry from the Applicants, but the result of the Respondent becoming aware of the situation through her own enquiries. She appears to have acted promptly to rectify the failure when it came to light. The Legal Member also notes that the Respondent was letting out a property for the first time and was therefore inexperienced. However, she was fully aware of the requirement to lodge the deposit and had received a reminder from the scheme on 4 November 2018. It is not clear why her attempt to transfer the funds failed, However, she should have checked with the scheme that it had been received when she did not get an acknowledgement of the deposit, rather than just assuming that it had been received. However, taking into account the explanation for the delay, the relatively short period that the deposit was not secured, and the Respondent’s inexperience as a landlord, the Legal member is satisfied that the penalty to be imposed should be at the lower end of the scale.
20. For the avoidance of doubt the Legal Member did not consider the information provided regarding the Applicant’s alleged motivation for lodging the application to be a relevant consideration. Furthermore, the Legal Member took no account of the information provided by both parties regarding other areas of dispute between them, and the timing of the application. It does appear from the paperwork lodged that the issue of the Applicants’ entitlement to make an application under the 2011 Regulations was discussed during negotiations or mediation about tenancy related matters. It is unfortunate if the Respondent was given the impression by the Applicants that they did not intend to exercise their right to make an application. However, this is not relevant. The Applicants were entitled to make the application from the time the Respondent missed the deadline imposed by the 2011 Regulations.
21. The Legal Member is satisfied, having regard to the factors specified in paragraph 19 of this decision, that an order for payment of the sum of £700 should be made.

## **Decision**

22. The Tribunal determines that an order for payment of the sum of £700 should be made in favour of the Applicants.

## **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**

**22 September 2020**