

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under regulations 9 and 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“2011 Regulations”)**

**Chamber Ref:** FTS/HPC/PR/17/0502

**Re:** 34 Portree Avenue, Dundee DD5 3EQ (“the Property”)

**Parties:**

**Carole Hay, 31 Forthill Drive, Dundee DD5 3DY (“the Applicant”)**

**Alistair Martin, 3 Godfrey Street, Dundee DD5 2QZ (“the Respondent”)**

**Tribunal Member:**

**Pamela Woodman (Legal Member)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:**

**Background**

1. The Applicant made an application to the Tribunal under regulation 9 of the 2011 Regulations and in accordance with the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended, (“**2017 Regulations**”). More specifically, the application was made in terms of rule 103 (*Application for order for payment where landlord has not paid the deposit into an approved scheme*) of the HPC Rules.
2. The order sought from the Tribunal was an order for payment of three times the amount of the tenancy deposit as a result of the Respondent (as landlord) not having paid the tenancy deposit into an “approved scheme” (as defined in the 2011 Regulations). The Applicant stated that the tenancy deposit was £650.
3. The application form was accompanied by copies of the following:
  - a. Tenancy agreement (for short assured tenancy) between A Martin and Carole Hay dated 8 and 9 February 2012;

- b. Mandate letter by the Applicant dated 14 December 2017, authorising various people to represent Carole Hay and confirming that Peter Kinghorn was authorised to sign the application form; and
  - c. Letter from D Martin to P Kinghorn dated 25 October 2017, referred to in application form as “EVIDENCE OF DATE OF END OF TENANCY”.
- 4. A notice of acceptance of the application was issued by the Tribunal dated 21 December 2017 under rule 9 of the HPC Rules (“**Notice of Acceptance**”), which confirmed that the application paperwork had been received by the Tribunal on 14 December 2017, that no further documents or information were required before the application could be accepted for determination by the Tribunal and that the Chamber President did not consider that there were grounds for rejection of the application in terms of rule 8 of the HPC Rules.
- 5. Each of the Parties was sent a letter by the Tribunal dated 10 January 2018 confirming that the application had been received, intimating the date of the scheduled case management discussion and noting that written representations from the Respondent must be received by 28 January 2018.
- 6. Written representations were provided by the Respondent dated 27 January 2018, accompanied by various attachments.
- 7. A case management discussion (“**CMD**”) was scheduled for 2pm on Monday 12 February 2018 at Caledonian House, Greenmarket, Dundee DD1 4QX.
- 8. This decision arises out of the CMD.

### **Key relevant legal provisions**

- 9. Regulation 9(1) (*Court orders*) of the 2011 Regulations is in the following terms:

“A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.”

- 10. Regulation 3(1) (*Duties in relation to tenancy deposits*) of the 2011 Regulations is in the following terms:

“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.”

- 11. Regulation 9(2) (*Court orders*) of the 2011 Regulations is in the following terms:

“An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.”

12. Regulation 10 (*Court orders*) of the 2011 Regulations is in the following terms:

"If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff –

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(b) may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to –

(i) pay the tenancy deposit to an approved scheme; or

(ii) provide the tenant with the information required under regulation 42."

13. With effect from 1 December 2017, the functions and jurisdiction of the sheriff on matters arising out of the 2011 Regulations (and various other civil matters) in relation to any "assured tenancy" (as defined in section 12 of the Housing (Scotland) Act 1988) were transferred to the Tribunal by virtue of section 16 of the Housing (Scotland) Act 2014.

14. Rule 17(4) of the HPC Rules is in the following terms:

"The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision."

### **The proceedings, namely the CMD on 12 February 2018**

15. In addition to the Legal Member and Sinead O'Connor (clerk to the CMD), the following persons participated in the CMD:

a. Peter Kinghorn, Principal Solicitor, Dundee North Law Centre, as legal representative for the Applicant ("**Mr Kinghorn**");

b. The Respondent; and

c. Mr Donald Martin, as lay representative for the Respondent ("**Mr D Martin**").

16. The Applicant was not present at the CMD. Mr Kinghorn explained that the Applicant was working and so was unable to attend. The Tribunal had not been advised of this in advance. During the CMD, Mr Kinghorn agreed that it might have been helpful for the Applicant to have been present in person. Later in the CMD, when expressly asked for submissions as to whether or not they would wish the Applicant to be present in person before a decision was taken, both Mr Kinghorn, on behalf of the Applicant, and the Respondent agreed that this was not necessary.

17. The Legal Member explained the purpose of the CMD, the procedure which would be followed and the potential outcomes from the CMD, which could involve (amongst other things) awarding or refusing a payment order or the referral to a hearing. The Legal Member highlighted that, as was explained in the letter sent to each of the Parties by the Tribunal dated 10 January 2018 notifying the Parties of the CMD, the Tribunal may do anything at a CMD which it may do at a hearing.
18. The Legal Member explained that, whilst there may be related matters which were relevant in considering the application before the Tribunal today, no action, step or decision may be taken in relation to those other matters by the Tribunal as they were not the subject of the application currently before it.
19. In summary, the following facts were confirmed by both Parties to be agreed, admitted and/or accepted:
- a. The duration of the tenancy was from 14 February 2012 until 17 September 2017.
  - b. The rent, payable by the Applicant (as tenant) to the Respondent (as landlord), was at the commencement of the tenancy, and throughout the tenancy, £650 per calendar month.
  - c. The Respondent did not attempt to increase the rent during the tenancy.
  - d. The Applicant had paid a tenancy deposit of £650.
  - e. As at the date of the CMD, the full tenancy deposit had been retained by the Respondent and none of it had been repaid to the Applicant.
  - f. As at the date of the CMD, the tenancy deposit had not been paid into an "approved scheme".
  - g. The Respondent had been a compassionate and reasonable landlord who had been supportive of the Applicant during difficult personal and financial times. During the tenancy, Mr D Martin has also provided assistance to the Applicant in applying for benefits and similar to which the Applicant might be entitled.
20. The Parties were not agreed with regard to various alleged wants of repair as at the termination of the tenancy and as to who was responsible to bear the costs of same. No opinion or decision was given by the Legal Member on those matters during the CMD. Such matters were not the subject of the application currently before the Tribunal.
21. Mr Kinghorn confirmed that the address given for the Applicant in the application form may be taken as the forwarding address for the Applicant.

## **Findings of fact**

22. The Legal Member was satisfied, on the balance of probabilities and based on the documentation provided, that:

- a. The application related to an “assured tenancy” (as defined in section 12 of the Housing (Scotland) Act 1988) and so the Tribunal had jurisdiction to hear the case.
- b. There was a landlord (i.e. the Respondent, which was not a local authority, registered social landlord or Scottish Homes) who had received a tenancy deposit (which was expressly referred to in the Tenancy Agreement, which the Applicant had referred to in her application and which was agreed during the CMD to have been paid) in connection with a relevant tenancy (the Applicant being an “unconnected person” relative to the Respondent and the use of the Property not falling within any of the types set out in section 83(6) of the Antisocial Behaviour etc. (Scotland) Act 2004, as amended). This was all relevant in order to allow the Legal Member to find that regulation 3 of the 2011 Regulations was applicable in the particular circumstances of this case.

23. For the purposes of regulation 9(2) of the 2011 Regulations and based on the information provided in the Notice of Acceptance, the Legal Member found that the application was made “in time” by being “made no later than 3 months after the tenancy has ended”.

24. Given that the tenancy commenced before “the first day on which an approved scheme [had become] operational” (as per regulation 48 of the 2011 Regulations), the Legal Member noted that the tenancy deposit should have been paid into an “approved scheme” by 13 November 2012.

## **Decision**

25. The Tribunal decided that a fair, proportionate and just sanction in the circumstances of this particular case was for the Respondent to be ordered to pay the Applicant an amount of £650 (*six hundred and fifty pounds sterling*) as a result of the Respondent’s failure to comply with his duties in regulation 3 of the 2011 Regulations, and that payment should be made on or before Tuesday 27 March 2018. Accordingly, the Respondent was ordered to do so.

26. The order referred to in paragraph 25 was intimated orally to the Parties by the Legal Member during the CMD (after it resumed following adjournment).

## **Request for written reasons**

**A party may request the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for this decision within 14 days of the date of issue of this decision.**

## **Right of appeal**

**In terms of Section 46 of the Tribunals (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.**

**Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.**

P Woodman

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**Legal Member/Chair**

*12 February 2018*  
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**Date**