

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

**Chamber Ref: FTS/HPC/PR/24/0093**

**Re: Property at Copper Cottage, High Street, New Galloway, DG7 3RL (“the Property”)**

**Parties:**

**Ms Katy Elphinstone, Drumcreel, Kirk Road, New Galloway, DG7 3RS (“the Applicant”)**

**Mr Andrew Walker and Mrs Margaret McSorley Walker, Copper Cottage, High Street, New Galloway, Castle Douglas, DG7 3RL (“the Respondents”)**

**Tribunal Members:**

**Richard Mill (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order be granted against the Respondents for payment to the Applicant of Two Hundred and Fifty Pounds (£250)**

Introduction

This is an application under Rule 103 and Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

The CMD took place by teleconference on 23 April 2024 at 2.00 pm. The applicant failed to attend the hearing. The respondents joined the hearing and represented their own interests.

The tribunal considered whether the CMD should be adjourned to afford the opportunity for the applicant to participate at later date. The tribunal concluded that it would not be in the interests of justice to do so having regard to the overriding objective

contained in Rule 2. Delay is not in the interests of either party. There are no material disputed facts based upon the documentary evidence and the matter is a straightforward one. The tribunal also considered whether the application should be dismissed for want of insistence but concluded that as the dispute was still live that dismissal would likely be challenged by the applicant thus leading to further delay. The Respondents were keen to have the application determined.

### Findings and Reasons

The property is Copper Cottage, High Street, New Galloway DG7 3RL. The applicant is Ms Katy Elphinstone who is the former tenant. The respondents are Mr Andrew Walker and Ms Margaret McSorley who are the owners of the property and former landlords.

The parties entered into a private residential tenancy in respect of the property which commenced on 3 October 2018. The rent was £500 per calendar month.

The applicant paid £500 by way of deposit. The applicant has provided a copy of her bank statement showing the deposit was paid to the respondents on 1 October 2018.

The applicant vacated the property after receiving a Notice to Leave dated 25 July 2023 which required vacant possession by 20 October 2023. She left the property on or about 6 November 2024.

The applicant has provided documentary evidence from Letting Protection Service Scotland which confirms that the deposit was paid into their scheme on 1 January 2019. The date of the deposit being made into the scheme is not disputed by the respondents. This is clearly outwith the statutory limit of 30 days from the commencement of the tenancy.

The tribunal was satisfied that the landlords have not complied with the requirements of the 2011 Regulations and in particular did not lodge the deposit paid into an approved scheme timeously. The duties of landlords are contained within Regulation 3. This requires a landlord who has received the tenancy deposit in connection with the tenancy to pay the deposit to a relevant scheme administrator within 30 working days of the beginning of the tenancy. The respondents failed to do this which they candidly accept.

The Tribunal was satisfied that the respondents failed to comply with the duty in Regulation 3. Regulation 10 requires the Tribunal to make an Order against the respondents to pay to the applicant an amount not exceeding three times the amount of the tenancy deposit. The applicant believes that the minimum penalty is one times the amount of the deposit but that is not correct and corresponds to the situation in England.

The Tribunal considered all relevant circumstances prior to making any Order under Regulation 10.

There is a strict liability and the public do require to have confidence that residential landlords are operating fairly and that their deposits are secured in accordance with the law in force in Scotland.

The respondents acted as accidental landlords. They have never let the property on any other occasion and do not let any other properties. They were approached by the applicant's mother to seek to assist her as she was struggling to find suitable accommodation for herself and her children who had enrolled in local schools. They wished to help despite it being an inconvenience to themselves.

The respondents are generally diligent people who have busy lives and their own professional and business interests. Their dealings with the tenancy were generally of a high standard, including good communications with the applicant throughout the time that she lived there.

The deposit was not protected for the whole of the required period but was for the majority of the time and the respondents failure to lodge the deposit timeously was due to a lack of knowledge and understanding as to the relevant Regulations and their statutory obligations.

The respondents did not make any financial gain from the failure to protect the deposit for the whole period of time and neither did the applicant suffer any financial prejudice. Following the applicant leaving the property she agreed to the deposit being released from the scheme towards outstanding rent.

In all the circumstances, the Tribunal ordered that the respondents pay to the applicant the sum of one half of the amount of the tenancy deposit ie a total of £250. This is at the lowest end of the scale and is fair and proportionate in all of the circumstances of this case.

### **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.**

Richard Mill

23 April 2024

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**Legal Member/Chair**

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**Date**