



**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/24/1715**

**Re: Property at 2/2 19 Springfield Gardens, Glasgow, G31 4HT (“the Property”)**

**Parties:**

**Mr Daniel Sewerynski, 2/2 19 Springfield Gardens, Glasgow, G31 4HT (“the Applicant”)**

**Mrs Vicky Armstrong, Mr Peter Armstrong, Kintail Linns Road, Torthorwald, Dumfries, Dumfries and Galloway, DG1 3PU; Kintail Linns Road, Torthorwald, Dumfries, Dumfries and Galloway, DG1 3PU (“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 in the sum of Five Hundred Pounds (£500)**

**Introduction**

1. This is an application under Rule 103 and Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
2. Service of the application and intimation of the Case Management Discussion (CMD) was effected upon the respondents by Sheriff Officers on 6 June 2024.
3. The CMD took place by teleconference on 3 July 2024 at 10.00 am. The applicant joined the hearing and represented his own interests. The respondents were represented by Ms Emma Hamilton of Complete Clarity Solicitors.

## Findings and Reasons

4. The tribunal considered all the documentary evidence placed before it. This includes the originating bundle of evidence, together with the submissions for the respondents dated 20 June 2024 and the applicant's response thereto dated 28 June 2024. An additional email missing from the respondents bundle was lodged during the hearing.

5. The property is 19 Springfield Gardens, Glasgow G31 4HS. The applicant is Mr Daniel Sewerynski who is the tenant. The respondents are Mr Peter Armstrong and Mrs Vicky Armstrong who are the landlords.

6. The parties entered into a private residential tenancy in respect of the property which commenced on 15 February 2022. The rent stipulated was £695 per calendar month. The applicant paid £695 by way of deposit.

7. The written lease entered into between the parties stipulated that the relevant scheme administrator for the purposes of the securing of the deposit was SafeDeposits Scotland.

8. The applicant relies upon an email from SafeDeposits Scotland dated 8 April 2024 which confirms that his deposit was registered, but not until 4 March 2024. He has also produced emails from the other two Deposit Schemes in Scotland, Mydeposits Scotland and Letting Protection Service Scotland which confirms that his deposit was not held with those deposit schemes.

9. The respondents are candid in accepting that they did not adhere to the regulations and regrettably failed in their duties to pay the deposit into an approved scheme as required. They were unaware of this until recently. They and the applicant himself was misled by the former letting agent. An email was issued at 11.00 am on 15 February 2022 from Andrew Muir of Ross Sales and Lettings confirming that the deposit was registered and had been lodged with SafeDeposits Scotland revealing a reference of DAN691061. This statement by the letting agent was false and misleading.

10. The respondents' letting agent, Ross Lettings, otherwise Ross Sales and Lettings, otherwise R&R Lets (Scotland) Ltd fell into administration. The respondents obtained the assistance of the liquidators and identified that the deposit had not been protected appropriately. Whilst an account had been registered for the tenancy address no funds had been deposited. As a consequence of this, the respondents took immediate step to rectify matters by the lodging of a further sum of £695 from their own funds with SafeDeposits Scotland. This was registered on 4 March 2024 with a deposit reference of DAN847989 which is evidenced. The deposit certificate is thereafter provided to the applicant.

11. The tenancy between the parties continues to date. The respondents have evidenced their strenuous efforts to resolve the difficulty as soon as it became

apparent and this includes corresponding clearly and transparently with the applicant at all times.

12. Whilst it can be accepted that the respondents former agents had day to day responsibility for the collection of deposits and their protection into approved schemes, this does not dilute the respondents duties to have obtained clarity of all accounting. The respondents were the landlords. The statutory duties fell upon them personally.

13. The tribunal was satisfied that the landlords did not comply timeously with the requirements of the 2011 Regulations and in particular did not lodge the deposit paid into an approved scheme. The duties of landlords are contained within Regulation 3. This requires the landlord who has received the tenancy deposit in connection with the relevant tenancy to pay the deposit to a relevant scheme administrator from an approved scheme within 30 working days of the beginning of the tenancy.

14. 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.

16. The applicant has suffered no financial loss though has been inconvenienced by the respondents failure to ensure the deposit was paid into a scheme as required.

17. The applicant asked in the application that the maximum penalty representing three times the tenancy deposit paid should be imposed. This would not be fair, reasonable nor proportionate. The approach to be taken in penalties being imposed by the tribunal under the Tenancy Deposit Schemes Regulations has been set out by Sheriff Ross sitting in the Upper Tribunal in appeal UTS/AP/19/0020. In assessing the level of a penalty charge the question is one of culpability and the level of penalty requires to reflect the level of culpability. The admission of failure tends to lessen fault which is the case here. There is no doubt that the respondents breach was not intentional and this lessens the culpability. Neither was the failure reckless in that the respondents had instructed what they believed to be a reputable third party letting agent and had no reason to doubt their ability at that time to meet the duties in terms of the Regulations. Indeed both parties received written communications from the said letting agent that the deposit had been protected.

18. In all the circumstances, the Tribunal orders that the respondents pay to the applicant the sum of £500 This is fair and proportionate in all of the circumstances. The public 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.

## **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

**3 July 2024**

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**Legal Member/Chair**

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**Date**