



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies)(Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/23/2216**

**Re: Property at 3/4 Lower Gilmore Bank, Edinburgh, EH3 9QP (“the Property”)**

**Parties:**

**Ms Satsuki Nomura, 4F2 11 Buccleuch Street, Edinburgh, EH8 9NG (“the Applicant”)**

**Mr Syed Adnan Ali, 3/4 Lower Gilmore Bank, Edinburgh, EH3 9QP (“the Respondent”)**

**Tribunal Members:**

**Gabrielle Miller (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to an order for payment for £1407.12 (ONE THOUSAND FOUR HUNDRED AND SEVEN POUNDS AND TWELVE PENCE).**

**Background**

1. An application was received by the Housing and Property Chamber dated 29<sup>th</sup> June 2023. The application was submitted under Rule 111 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent not returning an over payment of rent and not returning the deposit.
2. On 5<sup>th</sup> September 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 13<sup>th</sup> October 2023 at 10am by teleconferencing. The letter also requested all written representations be submitted by 26<sup>th</sup> September 2023.

3. On 6<sup>th</sup> September 2023, sheriff officers served the letter with notice of the CMD date and documentation upon the Respondent by leaving it in the hands of Laixi Luo. This was evidenced by Certificate of Intimation dated 6<sup>th</sup> September 2023.
4. This case is conjoined with FTS/HPC/PR/23/2213.

#### The Case Management Discussion

5. A CMD was held on 13<sup>th</sup> October 2023 at 10am by teleconferencing. The Applicant was not present but was represented by Mr Peter Hanman, Advice Caseworker, Edinburgh University Students Association. The Respondents were not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make any in advance of the CMD. Mr Hanman noted that the lease specifies that there was a deposit of £1200 paid. Mr Hanman noted that the email of 12<sup>th</sup> June 2023 that was lodged with the documents stated that the deposit would be returned when he had the money to do so. The deposit schemes have been checked and there was no deposit lodged. There has been no contact from the Respondent. The Applicant has not had her deposit returned to her. This is the main subject of the adjoining case. The Tribunal was satisfied that the outstanding amount for £1407.12 was due to the Applicant by the Respondent and that it was appropriate to grant an order accordingly. The Tribunal found that the Applicant was entitled to be granted an order for payment amounting to £1407.12 to be paid by the Respondent.
6. On 18<sup>th</sup> October 2023 the Respondent emailed the Housing and Property Chamber stating that he has been out of the country for some time and did not receive the paperwork in time to attend the CMD. He first became aware when a person living in his property signed for a letter for him. She notified him of its arrival by sending a Whatsapp message. He instructed her to open the letter at that point. The letter informed him of the decision of the Tribunal to grant an order against him. This was the first point that he was aware of the proceedings in this or the joint case.
7. On 24<sup>th</sup> October 2023 the Respondent emailed the Housing and Property Chamber to confirm that he wished to recall the decision.
8. The Tribunal accepted that it was in the interests of justice to allow the recall to be granted given that the Respondent would have had intended to attend the CMD had he known about it. However, he had been unable to do so as he had only been made aware of the proceedings after the decision had been made. The Tribunal accepted this and recalled the Order on 8<sup>th</sup> November 2023.
9. On 9<sup>th</sup> February 2024, all parties were written to with the date for the Case Management Discussion ("CMD") of 20<sup>th</sup> March 2024 at 10am by teleconferencing.

#### The recalled CMD

10. A CMD was held on 20<sup>th</sup> March 2024 at 10am by teleconferencing. The Applicant was not present but was represented by Mr Peter Hanman, Advice Caseworker, Edinburgh University Students Association. The Respondent was present and represented himself.
11. The Respondent was calling into the CMD from Belgium. It was unclear to the Tribunal about being able to take his evidence from Belgium without first gaining the permission of the Belgium government. The Tribunal was reluctant to take evidence from him until permission had been granted. The Respondent confirmed that he did not dispute that the deposit had not been returned but did dispute the overpayment of rent. The Tribunal considered that given that there was a dispute that a hearing would need to be fixed. A direction will be issued.
12. The Respondent noted that he has been trying to contact the Applicant to repay her deposit to her. She has not so far responded to this. The Tribunal noted that there is nothing preventing the parties to discuss any matters arising from the case. They do not need to wait until a CMD or hearing to discuss matters if they wish to do so.
13. Adjourned to a hearing to allow permission to be granted for the Respondent to give evidence and for the Respondent to provide evidence as to why he considers that there is no overpayment of rent. A direction will be issued to both parties.

#### The hearing

14. A hearing was held on 7<sup>th</sup> August 2024 at 10am by teleconferencing. The Applicant was not present but was represented by Mr Peter Hanman, Advice Caseworker, Edinburgh University Students Association. The Respondent was present and represented himself.
15. The Respondent admitted that he had not lodged the deposit in an approved scheme. He has previously lodged his tenant's deposits but had failed to lodge this deposit by an oversight on his part. He has now been made redundant again. He is in a difficult financial position. He is not paying his mortgage. There are arrears of approximately £15000. He currently has the Property on the market to sell it. He hopes to recoup the cost of the Property and to be able to address all of his debts when the sale goes through. At the moment there has not been a lot of interest in the Property. He has had to reduce the Price to £335000. He has had to use an estate agent who will take their fees upon the sale of the Property as he cannot afford to pay those costs just now.
16. The Respondent is not in a financial position to repay the deposit to the Applicant. Although the Respondent first asserted that he did not have the Applicant's bank account but Mr Hanman said that there had been email sent to the Respondent by the Applicant in June 2023 with her bank details. The Respondent checked this and confirmed that he had her bank details then. He said that he was ashamed that he could not return the deposit and regretted not lodging it in a deposit scheme straight away.

17. The Respondent said that he did not understand that he had to pay the remaining rent from 28<sup>th</sup> May to 5<sup>th</sup> June 2023 to the Applicant. The Tribunal said that it was clear that notice had been given with a leave date of 28<sup>th</sup> May 2023. The Applicant did not leave early as she had left within her notice period. She is not claiming for the period before the notice period ended only that from the end of the notice period to the end of the payment month. She was not in occupation of the Property and this was outwith her notice period. She had also asked about payments to avoid this issue occurring. The Respondent accepted this point. He had not understood it previously.
18. Mr Hanman said that the Applicant's position remained as it has at the previous two CMDs. He noted that the Applicant had emailed the Respondent to ask how much rent she should pay or if it would be returned back to her on a pro rata basis. He did not accept that this was not clear to the Respondent.
19. The Tribunal said that it was unacceptable for the Respondent not to lodge the deposit in an approved scheme and not to have returned it to the Applicant. The Respondent is entitled to her deposit to be returned to her and for the over payment of rent to be returned to her.

#### Findings and reason for decision

20. A Private Rented Tenancy Agreement commenced 22<sup>nd</sup> December 2022.
21. A deposit of £1200 was paid in two parts. The first payment of £400 was paid on 28<sup>th</sup> November 2022. The second payment of £800 was paid on 16<sup>th</sup> January 2023.
22. The deposit was not lodged in any specified deposit scheme. This is a breach of the regulations. The Respondent admits that he did not lodge the deposit in an approved deposit scheme.
23. The Respondent indicated to the Applicant that he no longer had her deposit and would pay it back to her when he had the money. He has not paid the deposit back to her. The Respondent cannot repay the deposit to the Applicant as he does not have the money and cannot afford to repay her. He has recently been made redundant and has outstanding debts including to his mortgage company.
24. The Applicant paid her rent charge of £900 on 6<sup>th</sup> May 2023. Which was for the period 6<sup>th</sup> May to 5<sup>th</sup> June 2023.
25. The Applicant left the Property on 19<sup>th</sup> May 2023 which was before the date which she notified that she was leaving on 28<sup>th</sup> May 2023.
26. The Respondent did not return the overpaid rent amounting to £207.12.
27. The Respondent admitted that he did not return the deposit or the overpayment in rent.

28. The Respondent owes the Applicant £207.12 for the overdue rent payment and £1200 for the deposit that has not been returned to the Applicant.

### Decision

29. The Tribunal found that the Applicant was entitled to be granted an order for payment amounting to £1407.12 (ONE THOUSAND FOUR HUNDRED AND SEVEN POUNDS AND TWELVE PENCE) to be paid by the Respondent.

### **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.**

Gabrielle Miller

**7<sup>th</sup> August 2024**

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**Legal Member/Chair**

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**Date**