

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

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)  
Act 2014**

**Chamber Ref: FTS/HPC/CV/19/3855**

**Re: Property at 19/5 Niddrie House Avenue, Edinburgh, EH16 4UE (“the  
Property”)**

**Parties:**

**Ms Iris Lukan, 11 Holborn Place, Rosyth, KY11 2LG (“the Applicant”)**

**Ms Penelope Ngqondela, 19/5 Niddrie House Avenue, Edinburgh, EH16 4UE  
 (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the application should be decided without a Hearing  
and made an Order for Payment by the Respondent to the Applicant of the sum  
of £443.**

**Background**

By application, received by the Tribunal on 2 December 2019, the Applicant sought an Order for Payment against the Respondent in respect of a failure to return a tenancy deposit of £300. The Applicant also sought reimbursement of bank overdraft charges of £56 and a refund of rent from the date she moved out of the Property (18 October 2019) to 31 October 2019 (£143).

The application was accompanied by copies of a Rent Agreement between the Parties dated 29 March 2019 at a rent, payable on the first day of each month, of £375 and with a deposit of £300. The Rent Agreement stated that the deposit would be returned only if one month’s notice was given.

On 23 January 2020, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 13 February 2020. The Respondent did not make any written representations to the Tribunal.

### **Case Management Discussion**

A Case Management Discussion was held at Riverside House, Gorgie Road, Edinburgh on the morning of 27 February 2020. The Applicant was present. The Respondent was not present or represented.

The Applicant told the Tribunal that she rented a room in the Property. There was no lock on her bedroom door. The Respondent also lived in the Property. The Applicant had suspected that someone was hacking into her wi-fi connection. When people came to the Property to visit the Respondent, the number of available wireless connections increased when these individuals appeared and the Applicant was concerned that the individuals had been using their wi-fi to hack into her wi-fi connection. As she worked for a financial institution at the time, she had reported it to her employers and the police.

On 5 October 2018, she told the Respondent that an investigation was under way. The Respondent then immediately gave her one month's notice to leave the Property. Following the discussion between the Parties, the Respondent's behaviour changed completely, with strange loud shouting coming from her room every evening. The Applicant had become concerned for her own safety, so had taken the decision that she had to vacate the Property. She did this on 18 October 2019.

The Applicant provided no evidence for her claim in respect of overdraft charges and asked the Tribunal for permission to withdraw that part of her claim.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

The Tribunal noted that the Rent Agreement stated in terms that the deposit would be refunded provided one month's notice was given. The Applicant had stated that she had paid the rent up to 31 October 2019, but had vacated the Property on 18 October 2019.

The Respondent purported to give one month's notice to the Applicant on 5 October 2019, advising that the rent would be payable up to 5 November 2019. The Notice was, however, completely incompetent as it did not comply with the requirements of a Notice to Leave as set out in the Private Housing (Tenancies) (Scotland) Act 2016

The Tribunal was concerned that the Respondent had not complied with her legal obligation to lodge the deposit in an approved tenancy deposit scheme. Had she done so, the administrators of the scheme would have adjudicated on how the deposit moneys should be dealt with at the end of the tenancy and the Tribunal would have had no involvement.

The Tribunal had to make a determination based on the evidence before it. The Respondent had not submitted any written representations and had not been present or represented at the Case Management Discussion, so had chosen not to challenge the evidence of the Applicant as to her reasons for vacating the Property on 18 October 2019. The Applicant's oral evidence was in line with the evidence she had provided by way of written representations, which the Respondent had seen. The view of the Tribunal was that the Applicant was justified in her decision to vacate the Property on 18 October 2019 and that, accordingly, she was entitled to repayment of the deposit of £300 together with a further sum of £143, being 13 days' rent.

The Tribunal accepted the Applicant's request to withdraw her claim for reimbursement of overdraft charges.

**Decision**

The Tribunal determined that the application should be decided without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £443.

**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.**

George Clark

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**Legal Member/Chair**

27 February 2020  
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**Date**