



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber)**

**Chamber Ref: FTS/HPC/CV/19/0469**

**Re: Property at Flat 6/03, 240 Wallace Street, Glasgow, G5 8AU (“the Property”)**

**Parties:**

**Mr Dillon Alexander Abel, Mr Andrew Maxner, 204 Ranchridge Court NW,  
Calgary, T3G-1W5TG, Canada; 1137 Merivale Road, Unit 5, Ottawa, K2E 6Z5,  
Canada (“the Applicants”)**

**Mr Abdul Zaheer, 10 Langhaul Court Crookston, Crookston, Glasgow, G53 7RU  
 (“the Respondent”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member)**

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

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

**BACKGROUND**

1. The Applicants and Respondent previously entered into a lease relating to the Property. The lease ran from September 2018 until 20 December 2018;
2. A tenancy deposit of £870 was to be paid by the Applicants. This was done in a slightly unusual way. It was as follows:-
  - a) The Applicant Andrew Maxner and another person previously rented the Property from the Respondent. That lease ran from September 2017 until September 2018;
  - b) A tenancy deposit of £870.00 was paid in relation to that lease;
  - c) That deposit was timeously lodged with an approved tenancy deposit scheme (a “TDS”);
  - d) At the termination of that lease, the tenancy deposit was uplifted and returned to the Respondent. It was agreed between the Respondent

- and Andrew Maxner that these funds would then be retained as the deposit for the new lease between the Parties;
3. Following the lease being agreed in September 2018 the deposit funds were not lodged with a TDS;
  4. When the Applicants vacated the Property they made application for the return of the deposit funds. It became apparent at that stage that they had not been lodged with a TDS;
  5. The funds were still available. They were then lodged with a TDS;
  6. Thereafter, the Parties availed themselves of the dispute resolution process operated by the TDS. Some of the deposit funds were returned to the Applicants and £488.70 retained for payment to the Respondent. The Applicants challenged that decision and a further sum was returned to them, the sum of £280.00 being retained for payment to the Respondent;
  7. The Respondent was represented throughout this entire process by letting agents acting on his behalf;
  8. The Applicants presented an application to the Tribunal for an order under Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (the "TDS Rules") on 12 February 2019;

## **THE CASE MANAGEMENT DISCUSSION**

9. The Applicant Andrew Maxner participated in the Case Management Discussion by conference call. The Applicant Dillon Alexander Abel had provided the Tribunal with written authority for Mr Maxner to act on his behalf;
10. The Respondent did not attend but had corresponded with the Tribunal in advance explaining his position. The Tribunal accordingly proceeded in his absence;
11. The respondent had advised the Tribunal that the history of the case was as outlined above and that the failure to lodge the deposit funds with a TDS timeously was an "administrative error" following on from the new lease being granted in September 2018. He advised that the Applicants had requested for "at least a full refund of the £870.00 deposit" so suggested the matter be resolved by that amount being ordered to be paid;
12. The Applicant Andrew Maxner conceded that the history of the case was as outlined and that the error did appear to be an oversight. He accepted:-
  - There had been a previous lease from September 2017 until 2018 and the deposit funds paid were lodged with a TDS;
  - That at the end of that lease a new lease was entered in to ny him and another person. He agreed to the previous deposit funds being uplifted and re-used as the deposit for the new lease;
  - While the funds were not re lodged with a TDS they were clearly still available and had been lodged soon after the error became known;
  - The Applicants were able to, and did, use the TDS dispute resolution process to resolve an issue about the application of the deposit funds at the end of the tenancy;
13. Mr Maxner, on various occasions, referred to "they" when criticising certain behaviour relating to the tenancy. He clarified he was referring to the letting agents rather than the Respondent personally. The Tribunal made it clear that the case was directed against the Respondent, not the letting agents and the Tribunal required to consider any faults or failings on the part of the

Respondent in relation to this specific matter, rather than any wider issues arising from the tenancy;

14. Mr Maxner did not agree with the decision of the TDS to retain funds from the deposit for payment to the Respondent;

## **FINDINGS IN FACT**

15. The Tribunal found the following facts to be admitted or established:-

- i. The Applicants and Respondent previously entered into a lease relating to the Property. The lease ran from September 2018 until 20 December 2018;
- ii. A tenancy deposit of £870 was to be paid by the Applicants. This was done in the following way:-
  - a) The Applicant Andrew Maxner and another person previously rented the Property from the Respondent. That lease ran from September 2017 until September 2018;
  - b) A tenancy deposit of £870.00 was paid in relation to that lease;
  - c) That deposit was timeously lodged with a TDS;
  - d) At the termination of that lease, the tenancy deposit was uplifted and returned to the Respondent. It was agreed between the Respondent and Andrew Maxner that these funds would then be retained as the deposit for the new lease between the Parties;
- iii. Following the lease being agreed in September 2018 the deposit funds were not lodged with a TDS;
- iv. When the Applicants vacated the Property they made application for the return of the deposit funds. It became apparent at that stage that they had not been lodged with a TDS;
- v. The funds were still available. They were then lodged with a TDS;
- vi. Thereafter, the Parties availed themselves of the dispute resolution process operated by the TDS. Some of the deposit funds were returned to the Applicants and £488.70 retained for payment to the Respondent. The Applicants challenged that decision and a further sum was returned to them, the sum of £280.00 being retained for payment to the Respondent;
- vii. The Respondent was represented throughout this entire process by letting agents acting on his behalf;
- viii. The application to the Tribunal was received on 12 February 2019;

## **REASONS FOR DECISION**

16. The Tribunal, as stated, required to consider this case as directed against the Respondent. Any wider criticisms of the letting agents were not relevant and were not investigated by the Tribunal;
17. That being so, there was little disagreement between the Parties in relation to the facts as previously outlined;
18. The purpose of the TDS Rules is to provide protection to tenants in relation to deposit funds, to ensure these funds are available at the termination of a tenancy, and to ensure any dispute between the Parties is resolved in a fair manner by the TDS;

19. In this case, there was no jeopardy to any of those purposes. Although the funds had not been lodged timeously, they were still available, clearly had not been used by the respondent for any other purpose, were lodged swiftly once the error came to light and the dispute resolution process was used by the parties;
20. While the Applicants were not happy with the outcome of that process, that was not a matter for the Tribunal. The Tribunal had to decide the appropriate penalty to impose on the Respondent only in relation to his failure to timeously lodge the deposit funds;
21. In the circumstances of this case, the Tribunal considered the fault on the part of the Respondent to be at the lower end of any scale of breaches of the TDS Rules. The Tribunal imposed a penalty of two thirds of the deposit amount, namely a penalty of £580.00

## **DECISION**

The Tribunal granted an order against the Respondent for payment of the sum of FIVE HUNDRED AND EIGHTY POUNDS (£580.00) STERLING to the Applicants:

### **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.**

# V Crawford

19 July 2019

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Legal Member/Chair

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Date