



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Regulation 10 of The Tenancy Deposit  
Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/21/0524**

**Re: Property at 311 Holburn Street, Flat 2L, Aberdeen, AB10 7FP ("the Property")**

**Parties:**

**Miss Sarah Adegbite, 242 Headland Court, Aberdeen, AB10 7GZ ("the Applicant")**

**Mrs Jennifer Buchan or Foster, 63 Duthie Terrace, Aberdeen, AB10 7PS ("the  
Respondent")  
(Represented by her husband, Mr Adam Foster)("Mr Foster")**

**Tribunal Members:**

**Gillian Buchanan (Legal Member)**

**Decision**

At the Case Management Discussion ("CMD") on 28 April 2021 which took place by telephone conference the Applicant was in attendance and the Respondent was represented by her husband, Mr Adam Foster.

Prior to the CMD the Tribunal had received the Respondent's written representation per her email of 9 April 2021 with attachments.

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

The following issues were not in dispute:-

- The Respondent leased to the Applicant the subjects known as 311 Holburn Street, Flat 2L, Aberdeen, AB10 7FPU ("the Property") in terms of a Private Residential Tenancy Agreement ("the PRT").
- The PRT commenced on 9 June 2020 and the rent payable in terms thereof was £425 per month.
- The Applicant lodged with the Respondent a deposit of £425. This payment was made on 9 June 2020.

- The Respondent did not timeously pay the deposit into an approved scheme within 30 days of the beginning of the tenancy as required in terms of Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations").
- The deposit was paid by the Respondent to Safe Deposit Scotland in November 2020.
- The PRT ended on 8 December 2020 when the Applicant vacated the Property.
- The Applicant received back a full refund of the deposit.

## **The Case Management Discussion**

### *Submissions for the Applicant*

The Applicant stated:-

- That she had been advised that the deposit had been lodged with an approved deposit scheme when this was not the case.
- That she asked the Respondent's husband, Mr Foster, again near the end of the tenancy and on 23 November 2020 was told that the deposit had been lodged with Safe Deposit Scotland. In fact, she said, the deposit was lodged on 25 November 2020.
- That she had recovered the deposit in full.
- That whilst her application to the Tribunal sought payment of three times the deposit for the Respondent's failure to comply with the Regulations, she accepted that any decision was entirely a matter for the Tribunal.

### *Submissions for Respondent*

The Tribunal noted the detailed submissions made by the Respondent in her email of 9 April 2021, with attachments, which Mr Foster supplemented as follows stating:-

- That "Buchan" was the Respondent's maiden name and that she is now known as "Foster".
- That the Respondent works for Barratt Homes within the sales office at new housing developments.
- That the Property was bought by the Respondent in her capacity as a first time buyer and as her own home. She moved from the Property when she moved in with Mr Foster.
- That since moving out of the Property the Respondent has periodically rented it out.
- That the PRT was in the joint names of the Applicant and Mr Gavin Gordon.
- That the PRT referred to the deposit being lodged with Safe Deposit Scotland.
- That Mr Foster takes care of repairs in the Property and deals with lodging the deposits. He should have lodged the deposit timeously and it was his fault that this was not done. The lodging of the deposit slipped his mind.
- That the deposit was lodged as soon as it was discovered that it had been forgotten.
- That whilst not before the Tribunal Mr Foster stated that he had a receipt for the deposit being lodged on 23 November 2020.
- That his conscience is clear. He works long hours in a stressful environment and helped the Applicant and Mr Gordon on numerous occasions whilst tenants. These proceedings are an attempt on the Applicant's part to get money.
- That from the point of giving notice to leave the Property, the Respondent was refused entry. As a result the Respondent could not advertise for a new tenant to

move in and the Respondent and Mr Foster had to cover bills for the Property for the subsequent month with no tenant income to cover them.

- That the Applicant is a difficult individual.
- That an apology had been given to the Applicant and that the oversight had been remedied as soon as it came to his and the Respondent's attention.
- That on the Applicant's departure from the Property Mr Foster met her in the Property, pointed out that the shower head was broken but indicated that he would cover the cost. He and the Respondent were therefore annoyed to receive the application to the Tribunal. The Respondent had also to replace the washing machine.

#### *Applicant's Submissions in Response to Respondent's Submissions*

The Applicant denied ever having received an apology from the Respondent. She referred to an occasion where the Respondent proceeded to shout at her and reduced her to tears as a consequence of her refusing viewings of the Property until after the tenancy had ended. She explained that she was a carer, undertaking a high risk job during a pandemic and stated that a family member was also high risk. She said she was not trying to be difficult.

#### **Reasons for decision**

- The Tribunal takes a landlord's failure to comply with the Regulations very seriously.
- In terms of the regulation 10 of the Regulations it is stated:-

*"If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal -*

*(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit;"*

- Having admitted a breach of the Regulations the Tribunal is obliged to make an order against the Respondent.
- In determining the amount payable by the Respondent to the Applicant the Tribunal took into account the following:-
  - That the Respondent is not a commercial landlord.
  - That the failure to pay the deposit into an approved scheme timeously was a genuine oversight.
  - That the Applicant received the deposit in full after the tenancy ended.
  - That the deposit was lodged with Safe Deposit Scotland as soon as it became apparent that lodging had previously been overlooked.
  - That the Applicant had the benefit of the adjudication scheme provided by Safe Deposit Scotland had that scheme been required at the conclusion of the tenancy.
  - That there was no obligation on the Applicant to remind the Respondent to lodge the deposit or to enquire if she had done so.
  - That there was no obligation on the Applicant to forewarn the Respondent of her intention to make an application under the Regulations.
  - The deposit required to be lodged within 30 days of 9 June 2020.
  - The deposit was unprotected from the expiry of the 30 day period to the date upon which the deposit became protected once lodged with Safe Deposit Scotland, namely 25 November 2020.

The tribunal therefore determined that, having regard to the foregoing, the Respondent must pay to the Applicant a sum of £255 by way of a penalty for her failure to comply with the Regulations.

### **Decision**

The Respondent is ordered to pay to the applicant sum of £255.

### **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.**

Gillian Buchanan  
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**Legal Member/Chair**

**28 April 2021**  
**Date**