



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

Chamber Ref: FTS/HPC/PR/18/0596

Re: Property at 16/4 Mount Lodge Place, Edinburgh, EH15 2AB (“the Property”)

Parties:

Miss Connie Rotchford, 1/4 Newbelfield, Edinburgh, EH8 7PQ (“the Applicant”)

**Ms Elena Whitelaw, 6B (Unit 1-2), New Mart Road, Edinburgh, EH14 1RL (“the
Respondent”)**

Tribunal Members:

Mark Thorley (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Respondent pay the Applicant the sum of £2084
(Two Thousand and Eight Four Pounds) representing a figure of twice the
deposit.**

BACKGROUND

**By application dated 9 March 2018 the applicant applied to the First Tier
Tribunal under Section 10 of the Tenancy Deposit Schemes (Scotland)
Regulations 2011. The application was accompanied by a copy of the
Tenancy Agreement between the applicant and the Respondent in which the
tenancy commencement date was 9 January 2015. There was also a copy of
Form AT5 and emails between the applicant and CMC Property, the
Respondent’s representatives. Subsequent emails were also received from**

Safedeposits Scotland dated 26 March 2018 and Mydeposits Scotland dated the same date.

A case management discussion was held on 13 July 2018. At that hearing the applicant attended but the Respondent (then CMC Property) did not. The applicant's deposit of £1,042 had been returned to her in April 2018.

It was determined at the case management discussion that the applicant attended the property from 9 January 2015 until 1 April 2018. Subsequently the direction was made that the Landlord Ms. Elena Whitelaw was to be substituted as the Respondent.

Sheriff Officers information was provided on 20 July 2018 confirming that the Respondent is believed to be resident in the USA. Subsequently notification of the hearing of 5 December 2018 was made to the Respondent at her representative namely CMC Property, 6B Unit 1/ 2 New Mart Road Edinburgh.

THE HEARING

At the hearing the applicant attended. There was no attendance by or on behalf of the Respondent.

The Tribunal heard from the applicant. The applicant confirmed that she had tenanted the property from 9 January 2015 until she left on 1 April 2018. She had paid a deposit of £1,042 to CMC Lettings for the property. In terms of her tenancy agreement in Clause 6 the Landlord contracted that "The Landlord shall lodge the deposit with Safedeposits Scotland within thirty days of the commencement of the tenancy and provide the tenant with the prescribed information in accordance with his duties under the Tenancy Deposit Scheme (Scotland) Regulations 2011 as amended. The deposit will be held by Safedeposits Scotland throughout the tenancy. No interest shall be paid on the deposit".

Although the applicant accepted that the deposit has been returned to her in April 2018 it was clear that the deposit had never been paid into Safedeposits

Scotland or any other agency permitted to receive deposits. Accordingly for a period of more than three years the applicant's deposit was unprotected.

Although the Respondent was represented by CMC Lettings, the Respondent was responsible for ensuring that the deposit was paid into an appropriate safe deposit scheme. She failed to do so.

No evidence was submitted by the Respondent and no mitigation was received orally or in writing

The tribunal took the view that this breach was at the upper end of the scale bearing in mind the length of time in which the tenant has been unprotected. In the circumstances the tribunal ordered that the sum of £2084 be paid by the Respondent to the applicant representing twice the deposit.

FINDINGS IN FACT

The tenancy between the parties was constituted by tenancy agreement with a tenancy on duty 9 January 2015 and the tenancy concluded on 1 April 2018.

A deposit of £1,042 was paid by the applicant to the Respondent's representatives CMC Lettings.

That deposit was never paid into any scheme protecting the deposit.

Accordingly the deposit was unprotected for a period in excess of three years.

The deposit has been returned to the applicant in April 2018.

The tribunal ordered the Respondent pay to the applicant the sum of £2084 representing twice the amount of the deposit.

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.

Mark Thorley

Legal Member/Chair

Date

17th. Dec 2018