

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



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under the Tenancy Deposit Scheme (Scotland) Regulations 2011 for the purposes of Sections 120-122 of the Housing (Scotland) Act 2006**

**Chamber Ref: FTS/HPC/PR/18/0624**

**Miss Rasma Sneptse and Mr Edijs Jurjanis, Flat 2F1, 76 Slateford Road, Edinburgh EH11 1QU ("The Applicant")**

**Mr Colin Watson, 3 Cowal Place, Dunfermline, Fife KY11 8GP ("The Respondent")**

**Re: Property at 6C Rose Crescent (Ground Floor Right), Dunfermline, Fife KY12 0QS ("the property")**

**Tribunal Members – George Clark (Legal Member) and Jane Heppenstall (Ordinary Member)**

**Decision**

The Tribunal decided to grant the application and ordered the Respondent to pay to the Applicant the sum of £3,000 in respect of the Respondent's failure to lodge a deposit in an approved tenancy deposit scheme.

**Background**

By application, received by the Tribunal on 18 March 2018, the Applicant sought a payment by way of compensation in respect of the Respondent's failure to lodge the deposit she had paid in respect of the property with an approved tenancy deposit scheme.

The application was accompanied by a copy Short Assured Tenancy Agreement, which commenced on 6 October 2017 and ended on 5 April 2018. The rent payable was £500 per month and the deposit was stated to be £1,000, but a further £200 deposit had been paid, as the Applicant had a pet staying in the property. The additional deposit had been acknowledged by the Respondent by e-mail on 14 February 2018.

The Applicant stated in her application that the Respondent had not registered as a landlord with the local authority and also provided the Tribunal with a copy of a letter from Fife Council, dated 22 February 2018, which stated after a visit to the property that the fire detection system did not meet current minimum standards.

A Case Management Discussion was held on 19 October 2018, at which the Tribunal continued the matter to a Hearing. At the Case Management Discussion, the Respondent explained that the deposit had not been registered with an approved scheme as a result of a clerical oversight. The Applicant stated that she wanted the

maximum amount of compensation the Tribunal could award. The Legal Member chairing the Case Management Discussion directed that the Applicant lodge a written document setting out in full the reasons why she felt compensation should be paid and setting out a basis for calculating the amount of any compensation claimed. The Applicant, Miss Sneptse, in an e-mail dated 9 November 2018, stated that she had had to beg the Respondent over two months after the end of the tenancy to return the deposit and the Respondent had withheld £295 without legal justification. This had been a stressful time for her. She did not regard herself as competent to be able to ask for a specific amount, this being her reason for applying to the Tribunal. She felt that tenants were the most vulnerable parties in the real estate market and that the Respondent's violation of the law was serious.

### **The Hearing**

A Hearing was held at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy on the morning of 4 December 2018. The Parties were both present at the Hearing.

The Respondent told the Tribunal that he operated a UK-wide waste company along with the letting of properties. He had 4 rental properties in Scotland. He was in the process of refurbishing all 4 properties with a view to selling them, as he was exiting the letting market. He fully accepted that he had not complied with the requirement to lodge the deposit in an approved scheme but stated that it had most definitely been a clerical oversight and the money had been held in a separate account.

The Applicant, Miss Sneptse told the Tribunal that she had had to wait 8 weeks for return of the deposit. She had reluctantly agreed to the Respondent retaining £295 from it, as she felt that, otherwise, the Respondent would not refund any money at all. No inspection had been carried out at the end of the tenancy and the property had been left in a cleaner condition than it had been at the start of the tenancy. The Respondent said that he felt the deduction of £295 had been fair and had tried to resolve the matter before the Tribunal by agreement, but the Applicant had refused an offer of £500, which had been designed to compensate the Applicant for the fact that she had had to use a credit card to pay a deposit on a new property. The Respondent felt that he was a responsible and considerate landlord.

### **Reasons for Decision**

Regulation 3(1) of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations") states that a landlord must, within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme and Regulation 10 of the 2011 Regulations provides that if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal must order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit.

The Tribunal was of the view that it was not sufficient for the Respondent to say that failure to lodge the deposit had been a clerical oversight. He had told the Tribunal that it had been kept in a separate account, so a positive decision had been taken when it had been received to put it in that account, when the clear legal duty was to lodge it with one of the three approved tenancy deposit schemes. The Regulations regarding lodging deposits with approved schemes are designed to protect both parties and the Applicant's deposit had been at risk throughout the tenancy and the ability to challenge retentions proposed by the Respondent had been compromised. The Tribunal noted the letter from Fife Council. Strictly speaking, it was not for the Council to determine whether a property met the repairing standard. That could have


been, but had not been, the subject of a separate application to the Tribunal, but the statement in that letter that there was a failure to comply with the current requirements in respect of smoke and heat detectors, taken with the unchallenged contention of the Applicant that the Respondent had not registered as a landlord with the local authority, did not support his contention that he was a responsible and considerate landlord.

The Tribunal decided to regard the deposit as being £1,000, discounting the additional £200 in respect of the Applicant's pet.

The Tribunal regarded the Respondent's failure to lodge the deposit in an approved scheme as a serious omission which had resulted in considerable inconvenience and additional expense to the Applicant. The Respondent had offered £500 by way of compensation for that loss and inconvenience, but the Tribunal regarded it as important to stress that the requirement that the Tribunal **must** order a payment of a sum of money to a tenant where a landlord has failed to lodge the deposit as required by law means that the payment it orders is not compensation. The Tribunal has to make an order for payment even if there has been no loss or inconvenience to the tenant. In that respect, the Tribunal did not agree with the approach taken at the Case Management Discussion which appeared to place the onus on the Applicant to justify and quantify the payment sought in the application.

### **Decision**

Having taken into account all the evidence in written representations and given orally at the hearing, the Tribunal's decision was that the application should be granted and that the amount to be paid by the Respondent to the Applicant should be £3,000.



Chairperson  
4 December 2018