



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit  
Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/21/0842**

**Re: Property at Top Floor Left, 4 Stanley Street, Aberdeen, AB10 6UR ("the  
Property")**

**Parties:**

**Miss Rosie Allan, 85 Bridge Street, Montrose, Angus, DD10 8AF ("the Applicant ")**

**Ms Cheryll Davidson, 4 Redcourt, Woking, Surrey, GU22 8RA ("the Respondent")**

**Tribunal Members:**

**Lesley-Anne Mulholland (Legal Member) and Mike Scott (Ordinary Member)**

**DECISION**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined to grant an Order for Payment from the Respondent in  
favour of the Applicant in the sum of £1,020**

**BACKGROUND**

1. The Applicant is the former tenant of the property at 4 Stanley Street, Top Floor Left, Aberdeen, AB10 6UR. The Respondent is the owner and Landlady of the property. On 26 June 2019, the parties entered into a Private Residential Tenancy Agreement due to take effect from 28 June 2019.

2. On 19 April 2021 a Legal Member of the First-tier Tribunal with delegated powers of the Chamber President, considered the application paperwork received on 6 April 2021 and accepted the application as validly made.
3. The Applicant claims that she paid a deposit of £510 to the Respondent on 31 May 2019 and that the Respondent failed to deposit this into a Safe Deposit Scheme within time. She seeks compensation for that failure.
4. A Case Management Discussion took place remotely on the 9 July 2021. The Applicant was represented by Mr Allen and the Respondent was represented by Mr Green. It became clear that the Applicant had failed to attach relevant documents to an email. The Case Management Discussion was adjourned to a substantive hearing with Directions for an index and paginated paper bundle to be lodged no later than 14 days before the hearing.
5. The substantive hearing took place remotely by telephone on 18 August 2021. The Applicant was represented by Mr Allen and the Respondent was represented by Mr Green. There were no apparent difficulties with sound or connectivity issues. We were grateful to the Parties for allowing the hearing to proceed remotely during the current pandemic. We were satisfied that those taking part in the hearing had a reasonable opportunity to put their points across and that the hearing was fair. No complaint about the lack of effective participation caused by the remote hearing was brought to our attention.
6. The Applicant's Representative outlined the reasons for the application. He relied upon his written representations. In summary, the Applicant submits that the Respondent deliberately withheld the deposit for a period of 18 months and lodged it into a Safe Deposit Scheme only after it became clear that the Applicant may terminate the tenancy. We were asked to use our discretion in relation to the amount to be awarded.
7. In support of the Applicant's averments, we were asked to consider that the deposit should have been paid into a safe deposit scheme within 30 days. The Respondent had employed a law firm who would have advised her about her obligations and duties as a landlady and the requirement to deposit the deposit into a safe deposit scheme. The Applicant does not accept that the Respondent would not have noticed that her bank balance had an additional £510 therein. The Respondent would have had the deposit available to her during the 17-month period to use as she liked. The deposit was paid by the Applicant to the law firm instructed by the Respondent to frame the Tenancy Agreement. The

deposit would have been passed over from the law firm to the Respondent and it is the Applicant's position that she believes that the law firm would have explained that the deposit had to be paid into a safe deposit scheme and in any event the Tenancy Agreement specifies this.

8. Mr Green for the Respondent pointed out that the Applicant had not produced supporting evidence of a deliberate withholding of the deposit or of any mal intent to use the deposit for personal gain. The Applicant's Representative had made a number of assumptions in relation to the drawing up of the Tenancy Agreement but has based his assumptions on his understanding without producing any evidence to support them. He questioned why the Respondent would have paid the deposit into a safe deposit scheme at all when she realised the mistake, if this was a deliberate ploy by the Respondent instead of an oversight.
9. It is the Respondent's position that £510 could very easily have been overlooked from the bank statements. The Respondent and her family had encountered unrelated but serious difficulties during the period of the tenancy. There had been a fire and other personal matters that meant that the Respondent was not as careful as she should have been. It was an innocent oversight and the Applicant should not be compensated in all of the circumstances. It was only after Miss Allan raised a number of issues in relation to the Respondent's legal obligations, that the Respondent realised that she had not deposited the funds into a safe deposit scheme in time.
10. The Respondent accepts that a deposit in the amount of £510 had been paid by the Applicant and that the deposit had not been paid into an approved scheme for a period of around 17 months.

### **FINDINGS IN FACT**

11. The Applicant and the Respondent entered into a Tenancy Agreement on 26 June 2019 with date of entry 28 June 2019.
12. The Applicant paid a deposit of £510 to the Respondent on 31 May 2019.
13. The Respondent did not pay the deposit into an approved scheme within 30 days as required by law. The deposit was not placed into a safe deposit scheme until 17 December 2020.

14. The Respondent returned the deposit to the Applicant at the end of the Tenancy.

### **REASONS FOR DECISION**

15. The Tribunal proceeded on the basis of the documents and representations from the Parties, together with oral submissions.

16. Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 provides:

(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy:

(a) pay the deposit to the scheme administrator of an approved scheme; and

(b) provide the tenant with the information required under regulation 42.

17. Regulation 10 of the Tenancy Deposit Regulations provides:

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; and

(b) may, as the First-tier Tribunal considers appropriate in the circumstances of the application, order the landlord to

(i) pay the tenancy deposit to an approved scheme; or

(ii) provide the tenant with the information required under regulation 42.

18. As the Respondent accepts that she failed to pay the deposit into an approved scheme, there is little in dispute between the Parties. The only matter for the Tribunal is to determine the level of compensation to be paid to the Applicant.

19. The Tribunal noted that there was a deterioration in the relationship between the Parties, and that this deterioration has resulted in a number of claims and counter claims relating to the state of the property. We reminded the Parties that the issue to be determined relates only to whether there has been a breach

of the Tenancy Deposit Regulations and if so, what level of compensation should be awarded.

20. We accept the Respondent's position that over the period of the Tenancy Agreement that there were a number of unrelated personal issues that arose of a serious nature, as outlined in the various pieces of correspondence, that caused or contributed to the failure to lodge the deposit in time. Accordingly, we accept the Respondent's explanation that the failure to lodge the deposit into a Safe Deposit Scheme in time was an innocent oversight.
21. Regulation 10 of the 2011 Regulations provides that where there has been a breach of Regulation 3 and Regulation 9 has been satisfied, the Tribunal must impose a sanction of up to three times the deposit paid by the Tenant.
22. Any award under Regulation 10 is required to reflect a sanction which is fair, proportionate and just given the circumstances (Jensen v Fappiano 2015 GWD 4-89). In Tenzin v Russell 2015 House. L.R. 11 it was held that any payment in terms of Regulation 10 is the subject of judicial discretion after careful consideration of all the circumstances.
23. We have taken into account that the Applicant's deposit remained unprotected for a period of 17 months. This is a serious breach. We accept that the failure to pay the deposit into a safe deposit scheme was an innocent oversight. Taking everything into account, we determined the appropriate sanction to be the equivalent of two times the deposit. Accordingly, the Respondent is sanctioned to make payment of compensation to the Applicant in the sum of £1,020.

## **DECISION**

An Order for Payment is granted in the amount of £1,020.

## **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.**

**Legal Chair Lesley-Ann Mulholland**

**Date: 18 August 2021**