

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 Section 103 of the Tenancy Deposit
Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/19/1300

**Re: Property at 32 Marywell Street, Flat F oldmill court, Aberdeen, AB11 6JR
("the Property")**

Parties:

**Miss Chloe Martin, 16 WhiteHouse Street, Aberdeen, AB10 1QH ("the
Applicant")**

**Mrs Louisa Ho Jupp, 1 Hawthorne Way, Kintore, Inverurie, AB51 0SR ("the
Respondent")**

Tribunal Members:

Helen Forbes (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that an order should be granted in favour of the
Applicant in the sum of £525.**

Background

By application under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules") dated 24th April 2019, the Applicant applied for an order in terms of Regulation 10 of the Tenancy Deposit Schemes (Scotland) Act 2011 ("the Regulations"). The parties entered into a tenancy agreement in respect of the Property, commencing on 17th September 2018 and ending on 6th February 2019. The monthly rent was £525. A deposit of £525 was paid by the Applicant to the Respondent on 14th September 2018. At the end of the tenancy, the Applicant discovered that the tenancy deposit had not been lodged by the Respondent in terms of the Regulations. The deposit was lodged with My Deposit Scotland ("MDS") on 6th February 2019. There was adjudication over the return of the deposit. The Applicant was claiming an order for payment in the sum of £1575, which was three times the deposit. On 1st July 2019, the Respondent made written representations to the Tribunal, including a time-line of events and copies of the evidence submitted to MDS, including photographs and receipts.

Representations from the Applicant

The Applicant was asked by the Tribunal why she was seeking an order of three times the amount of the deposit. The Applicant's supporter responded by saying that the Applicant did not know how much to put down, and felt she had to put something down, so that was why she chose that amount. Aware that it was not the role of the supporter to make representations, the Tribunal asked the Applicant to confirm that this was the case. The Applicant confirmed this.

Representations from the Respondent

The Respondent stated that she thought an order for three times the deposit was unreasonable and excessive. She felt this was not what the law intended, and that an order of that level was for bad landlords and not a landlord with a good record. She said she hoped her mitigating circumstances would be taken into account.

Findings in Fact

1. The parties entered into a tenancy agreement in respect of the Property that commenced on 17th September 2018 and ended on 6th February 2019.
2. The monthly rent was £525.
3. A deposit of £525 was paid by the Applicant to the Respondent on 14th September 2018. The deposit was held in a private account by the Respondent.
4. The Respondent suffered ill-health during her pregnancy, leading up to her due date on 26th February 2019. On occasion, she was hospitalised during the latter half of the pregnancy.
5. At the end of the tenancy, the Applicant discovered that the tenancy deposit had not been lodged by the Respondent in terms of the Regulations.
6. The deposit was lodged with My Deposit Scotland on 6th February 2019. There was adjudication by MDS over the return of the deposit.
7. The Respondent has been letting the Property for approximately seven years and has had five tenancy agreements.
8. The Respondent has breached Regulation 3 by failing to pay the deposit into a tenancy deposit scheme.

Reasons for Decision

The Tribunal considered it was a serious matter that the deposit had not been lodged within 30 days of the tenancy commencing as required by Regulation 3. The Respondent was not a first-time landlord and she was aware of the Regulations and had lodged deposits for her previous tenancies. However, the Tribunal took into

The Case Management Discussion

The case called for a Case Management Discussion ("CMD") on 16th July 2019 at the Credo Centre, 14-16 John Street, Aberdeen. Both parties were in attendance. The Applicant was accompanied by her mother, Mrs Angela Martin as a supporter. The Respondent was accompanied by Mr John Thain as a supporter. The Tribunal explained the role of a supporter to all present.

Preliminary Matters

The Tribunal explained that the evidence that had been submitted to MDS would not be considered by the Tribunal as it was not relevant to the current case. The Tribunal asked the outcome of the MDS adjudication. The Respondent explained that MDS had returned two payments to the Applicant in the sums of £40 and £284. The remainder was awarded to the Respondent.

The Applicant's Evidence

The Applicant did not wish to say anything further to the Tribunal as her case was set out in the application.

The Respondent's Evidence

The Respondent's case was set out in her written representations. She explained that the Applicant had contacted her on 30th December 2018 to enquire about ending the tenancy early. At that point, the Respondent realised that she had not lodged the deposit with a scheme. She had put the tenancy deposit into a private account and thought she would return it to the Applicant at the end of the tenancy. She was asked by the Respondent on 6th February 2019 to lodge the deposit with a scheme, which she did. She said she 'didn't get round' to lodging the deposit sooner due to being on holiday, and being pregnant with her first child. The pregnancy was difficult and she had to have bi-weekly scans. She had rented the Property out for around seven years and had approximately five tenants during that time. She had always lodged the deposits with a scheme previously.

Discussion about a hearing

The Tribunal explained that there seemed to be agreement that the deposit had not been lodged and that this constituted a breach of Regulation 3. The Tribunal explained that a decision could be made today, or matters could be set down for a hearing on the amount to be paid. Parties were agreed that they wished matters to conclude today.

Breach of Regulation 3

The Tribunal explained that, in terms of Regulation 10, the Tribunal must make an order not exceeding three times the amount of the deposit. The Tribunal asked parties for representations in regard to the amount to be paid.

account that the deposit was unprotected for a period of approximately three and a half months, and that it was later lodged with TDS, allowing adjudication to take place. The Tribunal considered the fact that the Respondent was seriously unwell during the latter half of her pregnancy as mitigating circumstances. The Tribunal accepted that the Respondent overlooked the need to lodge the deposit on this occasion due to her personal circumstances. In all the circumstances, the Tribunal considered it fair and reasonable to grant an order in the sum of £525, which is one times the deposit.

Decision

An order should be granted in favour of the Applicant in the sum of £525.

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.

Ms Helen Forbes

Legal Member/Chair

16th July 2019

Date