

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

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**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules")**

**Chamber Ref: FTS/HPC/PR/19/1836**

**Re: Property at 79 Overhaugh Street, Galashiels, Selkirkshire, TD1 1DL ("the Property")**

**Parties:**

**Miss Erin McGregor, 79 Overhaugh Street, Galashiels, Selkirkshire, TD1 1DL ("the Applicant")**

**Mr Barry Green, 31 Birks View, Galashiels, Selkirkshire, TD1 1NR ("the Respondent")**

**Mr George Matthew Hall, 24 The Beeches, Tweedbank, Galashiels, TD1 3SY ("the Respondent's Representative")**

**Tribunal Member:**

**Susanne L. M. Tanner Q.C. (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") determined that an order must be made in terms of Regulation 10 of the 2011 Regulations requiring the Respondent to pay to the Applicant the sum of SIX HUNDRED AND SEVENTY FIVE POUNDS (£675.00) Sterling**

## **1. Procedural background**

1.1. On 13 June 2019, the Applicant submitted an application ("the Application") to the tribunal in terms of Rule 103 of the 2017 Rules. The Applicant alleges that the Respondent has failed to pay her deposit into a tenancy deposit protection scheme in the stipulated period of time after it was paid by her to the Respondent.

1.2. The Applicant attached to the Application:

1.2.1. A copy of the lease dated 18 February 2015 between the Applicant and the Respondent in respect of a tenancy of the Property;

1.3. On 17 June 2019 the tribunal received an email from Aileen Robertson, Private Sector Liaison and Enforcement officer, Scottish Borders Council, informing the tribunal that despite being named on the Application as the Applicant's Representative, she is not acting as such as requesting that she wished to be removed from the Application.

1.4. On 3 July 2019 the tribunal wrote to the Applicant stating that the tribunal had received confirmation from Scottish Borders Council stating that it does not represent her in the application and asking the Applicant to confirm whether she wished to proceed without representation. The Applicant was also asked to confirm what investigations she had undertaken to satisfy herself that the tenancy deposit has not been paid into an approved scheme within the required timescale, as she had stated in her Application that she assumed that to be the case.

1.5. On 5 July the Applicant emailed to state that she would like to proceed with the Application. She stated that she had spoken with the Council who had referred her to the local housing strategy team which informed her the landlord had not registered the property and told her that she could make this Application. She paid £450 deposit (the amount stated in the tenancy agreement) in 2015, and to her knowledge the Respondent had only registered the property in June 2019, having been spoken to by the Housing Strategy Team. On this basis she believes that he has not used one of the tenancy deposit schemes to protect her deposit.

1.6. On 22 July 2019 the Application was accepted for determination by the tribunal. The Applicant was informed by letter of 23 July 2019.

1.7. By letter of 30 July 2019, the tribunal notified the parties that the Application had been referred to the tribunal and that a Case Management Discussion had

been fixed for 30 August 2019 at 1000h at Langlee Community Centre, Marigold Drive, Galashiels, TD1 2LP. Parties were advised that the tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision on the application. Parties were advised that if they do not attend the Case Management Discussion, this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The Respondent was invited to submit any written representations he wished by 19 August 2019.

1.8. On 31 July 2019 the Application paperwork and notification of CMD was served on the Respondent by Sheriff Officers.

1.9. On 13 August 2019 the Respondent confirmed that the Respondent's Representative had authority to act on his behalf.

1.10. On 14 August 2019 the Respondent's Representative submitted written representations on behalf of the Respondent. Within the representations the Respondent admitted that he had failed to comply with the requirement to lodge the Applicant's deposit and provided an explanation for the failure. The written representations were sent to the Applicant.

## **2. Case Management Discussion ("CMD") – 30 August 2019 at 1000h at Marigold**

2.1. The Applicant, Miss McGregor, attended with her partner, Justin Stuart, in the capacity as supporter.

2.2. The Respondent, Mr Green, attended with George Matthew "Matt" Hall as his Representative.

2.3. The tribunal chair explained to parties the nature and purpose of the CMD and also reiterated that the tribunal could do anything at the CMD which it could do at a hearing, including reaching a decision.

2.4. Both parties lodged documents:

2.4.1. The Applicant produced a copy of the Safe Deposits Scotland Deposit Protection Certificate dated 6 August 2019;

2.4.2. The Respondent and his Representative produced an account showing rent and deposit payments due and received; and a Regulation 42 notice (incomplete).

- 2.5. The Applicant stated that she had paid the deposit in instalments, starting when she moved in. She said that she was unable to pay all of it in advance and the Respondent had agreed to let her pay it over 9 months at £50 per month in addition to the rent.
- 2.6. Mr Hall made reference to the statement which had been lodged and stated that it showed a running total for the deposit payments, which were paid between 1 March and 2 November 2015, totalling £450. Mr Hall was unable to state what sort of tenancy it was and stated that the lease was taken from a website. He stated that at the time Mr Green was of the opinion that it served the purpose and that his property letting had involved quite a learning curve. Mr Hall stated that Mr Green was dealing with the property himself. Mr Hall confirmed that Mr Green now has other properties, which have been on Short Assured Tenancies and then Private Residential Tenancies. He stated that this was the first property he had let and taken a deposit. He stated that the Respondent accepts that he failed to lodge the deposit, as stated in the written submissions, and puts it down to inexperience in relation to his first property. He stated that the Respondent may have to outsource the work required moving forward. Mr Hall stated that the Respondent's other properties comply and that he has a good working relationship with the Scottish Borders Council and is registered as a landlord on the Scottish Landlord register. The Respondent accepts that he has made a mistake.
- 2.7. Mr Hall submitted that as the deposit was not paid until 2 November 2015, the regulation did not require it to be lodged until 30 working days after it had been paid.
- 2.8. The Applicant and Respondent's Representative stated that the tenancy finishes tomorrow, 31 August 2019, following notice by the Applicant.
- 2.9. Mr Hall stated that the deposit, since paid, has been in the Respondent's current account, which is set up for transactions in relation to all of his properties. Since 6 August 2019 it has been lodged in one of the deposit schemes, Safe Deposits Scotland. This resulted from the Respondent being contacted by Scottish Borders Council following their discussions with the Applicant about the Property.
- 2.10. The Applicant stated that she had contacted a liaison officer because there was a big crack and the house was not up to standard. She was told that the house was not registered. The council employee had suggested that the Applicant's deposit may not be protected. The Applicant was concerned that there was no proper chance of her getting it back. She received a phone call to notify her that her money was in that deposit scheme.

- 2.11. The Applicant was aware that the council employee was intending to contact the Respondent.
- 2.12. Mr Hall referred to the reg 42 document which is intended to provide information to the tenant about deposit protection. After some further discussion it was accepted that the document was incomplete in that it did not contain the prescribed information and in any event the Respondent had not sent it to the Applicant. He assumed that the deposit protection company would do that.
- 2.13. In relation to the end of the tenancy, parties agreed that an inspection would be carried out at 9am on 1 September 2019 and that the deposit would be dealt with through the deposit protection scheme thereafter.
- 2.14. The Applicant initially stated that she was seeking the maximum payment order of three times the deposit. She stated that the respondent should have known about his obligations. She stated that he was already a landlord when she moved in. He had a pub and he was letting the rooms out in the pub. She was sure that he had other properties before this one and stated that there was clearly someone living in it before her. She stated that he should therefore have known about the duties. The Applicant did not know anything about tenancy deposits because this was her first private let. If the lady from the Council has not told her she would not have known anything about it. The Applicant then stated that she would like to get her deposit back. The tribunal chair explained that the issue of her deposit repayment after any deductions would be dealt with through the deposit protection scheme and that this tribunal was dealing with the Application about the landlord's admitted failure to lodge the deposit, which was a separate matter. The tribunal chair further explained that even if a payment order was made today, the Applicant would still be entitled to have her protected deposit dealt with through the scheme in the normal way.
- 2.15. Mr hall made submissions on the level of the penalty he was seeking on behalf of the Respondent. He referred to his written submissions and stated that three times the deposit would be a harsh penalty. He stated that over the years from when the tenant moved the Respondent has been more than helpful and assisted in staged payments. He has assisted when times have been hard for the Applicant and rent has been missed. There have been situations where he has extended his goodwill. He latterly moved from monthly to weekly payment. At this moment in time there is some outstanding rent money. There is £890 outstanding.
- 2.16. The Applicant accepts that there is £890 rent arrears, explaining that she was signed off work with depression. She stated that she intended to pay it on

31 August 2019. The tribunal chair explained that this tribunal is not dealing with rent arrears or deposit deductions.

- 2.17. Mr Hall continued by stating that everything was going fine in this tenancy. When anything brought to his attention he has dealt with it. He has addressed quite a lot of the repair items through Aileen Robertson through SBC. Latterly in the last month there has been some damage in the property. There is a glass panel smashed on the door.
- 2.18. The Applicant accepts that there is a glass panel which has been smashed but said that she is getting it fixed. The tribunal chair explained that this tribunal is not dealing with repairs issues or deposit deductions.
- 2.19. Mr Hall continued by stating that the Respondent has tried to be helpful. He has not been a bad landlord or a "criminal type" landlord. He has held his hands up. He has made two mistakes in not lodging the deposit and not providing the prescribed information. They are honest mistakes. They have not been done to anybody's real benefit. Once brought to his attention he has dealt with it immediately. He is a registered landlord. Back in 2015, he was quite a naïve person. Previously there was a family staying in the Property and there was no deposit taken off them. This was the only tenancy he had where a deposit was taken at the time that the Applicant moved in.
- 2.20. The Respondent confirmed that in between 2015 and the present day he has purchased nine "buy to let" properties. He did not take deposits in respect of the majority of those tenancies. It is all friends and family. There are two in respect of which deposits have been lodged, from approximately 2017 onwards.
- 2.21. Mr Hall stated that in the submission that was made the Respondent has admitted that it has not been lodged and he has also include that fact that in 2015 the Respondent had been going through quite a rough time personally. Mr Hall stated that even after the Respondent became aware in 2017 that he had to lodge tenancy deposits, he forgot about this one. Mr Hall classed it as an honest mistake and stated that there was no malice. Mr Hall stated that the money had been in the account since it had been paid and that the statement produced had been taken from the bank ledger.
- 2.22. Mr Hall concluded by stating that the Respondent wishes to get a conclusion today and hopes that the parties can all move forward. He reiterated that the Respondent had made a mistake for which he apologises.

### **3. Findings in Fact**

- 3.1. The Applicants and Respondent entered into a tenancy dated 18 February 2015 for the period 1 March 2015 to 1 March 2020.
- 3.2. The tenancy is due to end on 31 August 2019.
- 3.3. The Application to the tribunal was made on 13 June 2019, which was within the required period for making such an Application.
- 3.4. The Applicant paid a deposit of £450.00 in monthly instalments of £50 per calendar month between 1 March and 6 November 2015
- 3.5. The deposit should have been lodged with a deposit protection company within 30 working days of 6 November 2015.
- 3.6. The deposit was lodged with Safe Deposits Scotland on 3 August 2019.
- 3.7. A deposit protection certificate was issued to the Applicant.
- 3.8. The Respondent did not send the prescribed information about deposit protection in terms of Regulation 42 to the Applicant.
- 3.9. The deposit was lodged approximately three and a half years late.
- 3.10. The reason for lodging at that stage was due to the Applicant contacting Scottish Borders Council about repairs and registration issues and the Council contacting the Landlord.
- 3.11. The Landlord has nine other properties in his portfolio.
- 3.12. This was the first property he let to a tenant for which he took a deposit.
- 3.13. During the period 2015 to 2019 the Respondent commenced other tenancies and took two deposits which were lodged.
- 3.14. Even though he was then aware of deposit protection, the Respondent Landlord forgot to lodge this Applicant's deposit.
- 3.15. Throughout the period from 6 November 2015 to 3 August 2019 the deposit has been held in a current account of the Respondent which has transactions relating to all of his properties.

3.16. After the tenancy ends on 31 August 2019 the tenant's deposit will be dealt with through the tenancy deposit scheme.

3.17. The Respondent has admitted the breach and apologised for being naïve at the outset and then forgetting to lodge the deposit once he became aware of deposit protection in around 2017 when he lodged deposits in relation to other relevant tenancies.

#### **4. Discussion**

4.1. Reg 3(1) of the 2011 Regulations provides that 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.

4.2. The tribunal took account of the Applicants' written and oral submissions; and the Respondents' written and oral submissions.

4.3. In particular the tribunal had regard to the fact that the deposit was unprotected for the period of around three and a half years, when it should have been lodged within 30 working days start of the tenancy or at least 30 working days of the date of the last instalment of the deposit being taken, that is to say when it was "received". The tribunal took account of the fact that the Respondent has admitted the breach and apologised for it and his reasons for the late lodging. However, the tribunal took account of the fact that the Respondent should have been aware of his obligations and did in fact become aware of his obligations in around 2017 when he expanded his rental portfolio to nine properties, and lodged other deposits, after which time he still failed to lodge the Applicant's deposit. He also failed to provide her with the prescribed information and the document produced at the CMD had not been fully completed or sent to the Applicant.

4.4. On the basis of the findings in fact, the tribunal decided to make an order for payment by the Respondent to the Applicants of the sum of £675, which represents one and a half times the deposit amount.

4.5. The tribunal chair informed the parties that the repayment of the deposit after any deductions through the scheme would be dealt with as a separate matter.



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.

Susane Tanner

30 August 2019

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**Susanne L M Tanner Q.C.**  
**Legal Member/Chair**