

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



**Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16, Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/PR/18/1903**

**Rule 103 - Application for an Order for Payment where Landlord has not paid the deposit into an Approved Scheme**

**Re: 5 Blenheim Court, Causewayhead, Stirling, FK9 5EA (“the Property”)**

**Parties:**

**Alexandra Jowett, S/4, 9 Clarendon Court, Glasgow, G20 7PZ (“the Applicant”)**

**Sean Lewis, per SGL Property, Top Floor India Buildings, 86 Bell Street, Dundee, DD1 1HN (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent failed to comply with his duty as a Landlord in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) as amended by The Housing (Scotland) Act 2014 (Consequential Provisions) Order 2017 by failing to pay the Applicant’s Tenancy Deposit to the scheme administrator of an Approved Tenancy Deposit Scheme, grants an Order against the Respondent for payment to the Applicant of the sum of NINE HUNDRED AND THIRTY SEVEN POUNDS AND FIFTY PENCE (£937.50) Sterling.**

**Background**

- 1. By application dated 25 July 2018 the former tenant/Applicant applied to the First-tier Tribunal for Scotland (Housing and Property) Chamber for an order for payment where a landlord has not paid a deposit into an approved scheme**

in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011("the 2011 Regulations"). The Applicant lodged a copy of a short assured tenancy between herself and a joint tenant and the Respondent dated 1 and 31 August 2017, various excerpts showing payments and emails to and from the Applicant and Letting Protection Services Scotland, SafeDeposits Scotland and MyDeposits Scotland dated 19 June 2018.

2. On 5 November 2018 the Tribunal issued a Notice of Acceptance of the Application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").
3. On 20 November 2018 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 7 December 2018. The Tribunal advised both parties on 20 November 2018 that a Case Management Discussion under Rule 17 of the Regulations would proceed on 13 December 2018. This paperwork was served on the Respondent by Ian Smith, Sheriff Officer, Perth on 21 November 2018 and the certificate of execution of formal service was received by the Tribunal administration.
4. The Respondent did not make any written representations by 7 December 2018.

#### **Case Management Discussion**

1. The Tribunal proceeded with the Case Management Discussion on 13 December 2018. The Applicant was personally present. The Respondent did not appear personally. He was represented by his sister Aimi Lewis who produced a letter of authority from the Respondent advising that she would represent him.
2. Ms Lewis explained that she was the manager at SGLProperty who managed a portfolio of over 100 properties on a day to day basis. The company was owned by the Respondent. She confirmed the Respondent had received intimation from the Tribunal that written representations had to be made by 7 December 2018 and that she had read this letter when it had been served. However, she had not appreciated that she had to lodge written representations and stated that the letter of intimation was unclear.
3. She accepted the deposit had not been paid into an approved scheme. By way of explanation for this failure, the alert which would normally be sent from the accounts department on receipt of the deposit had not been sent to the lettings manager to create an account with Letting Protection Service Scotland for the deposit. At the time there was no cross check system in place and she put the cause of this failure down to a high turnover of staff.

Procedures were now in place to cross check and deposits were now paid into a separate account only for tenancy deposits as required by the Letting Agents Code of Practice. She advised that the deposit paid by the Applicant and her joint tenant was paid into the Respondent's business account. She advised that the deposit remained there until it was paid back to the tenants on or about 9 July 2018.

4. Although the Applicant had lived at the Property with a third party prior to the tenancy that was the subject of the Application, Ms Lewis accepted that the proceedings before the Tribunal related to a subsequent tenancy which started on 1 August 2018.
5. It was a matter of agreement between parties that this tenancy terminated by mutual consent on 31 May 2018. It was also a matter of agreement between parties that the deposit was £750 and that the Applicant and her joint tenant each contributed half of that deposit namely £375. It was also a matter of agreement that the deposit had been paid in full to the Applicant and to the joint tenant on or about 9 July 2018.
6. The Applicant explained after she had given notice to move from the Property she had spoken to a member of staff with regard to having the Property inspected, but this was not arranged before she left the Property. She had also emailed SGL Property asking about the return of the deposit but had received no reply. She took legal advice from Shelter, after which she sent a Special Delivery letter to SGL Property which re-iterated the terms of her previous emails which had gone unanswered. Although she did not produce a copy of the letter before the Tribunal, Ms Lewis explained she acted upon a deadline which the Applicant had given and arranged for the deposit to be returned to the Applicant and to the other joint tenant.
7. The Applicant explained that she had been frustrated by not knowing what had happened to her deposit and by the lack of response to her enquiries after the tenancy terminated. She had no idea what had happened to her deposit and had taken steps on the advice of Shelter to write to the three deposit scheme administrators on 19 June 2018 to ascertain whether any of them held the deposit. Each advised they did not. She explained that financially, not knowing whether or when she would get the deposit returned to her, had placed her in a position where she had to take on extra employment for her to meet day to day expenses.
8. The Applicant explained that the joint tenant had confirmed he did not want to be party to the action. In fairness to the Respondent, the Applicant confirmed she was not seeking 3 times the whole deposit of £750, but 3 times her share

of the deposit £375. Despite seeking an award of legal expenses against the Respondent, she advised the Tribunal that she had incurred no legal fees.

### **Findings in Fact**

9. The Applicant had lived in the Property with a joint tenant between 1 August 2017 –31 May 2018 in terms of a short assured tenancy between dated 1 August 2018
10. In terms of Clause 22 of the short assured tenancy agreement, the Applicant and the joint tenant agreed to pay a deposit of £750 to the Respondent. Each paid the Respondent £375 to cover the full deposit.
11. The Property was managed by SGL Property which was owned by the Respondent.
12. Due to an administrative failure at SGL Property, the deposit was not paid into an approved scheme. SGL Property had no system in place to cross check deposits had been paid. The deposit sat for the duration of the tenancy in the Respondent's business account.
13. By mutual consent the tenancy terminated on 31 May 2018.
14. The Applicant emailed SGL Property for the return of the deposit after the termination. There was no response from them initially. She sent a Special Delivery letter seeking the return of the deposit.
15. The Applicant was anxious about the uncertainty surrounding the deposit and was inconvenienced financially as a result.
16. Miss Lewis on behalf of the Respondent paid the deposit back to the Applicant and her joint tenant on or about 9 July 2018.

### **Reasons for Decision**

17. For the purpose of Regulation 9(2) of the 2011 Regulations the Tribunal found that the application was made in time within 3 months of the tenancy termination. The 2011 Regulations were intended, amongst other things to put a landlord and a tenant on equal footing with regard to any tenancy deposit and to provide a mechanism for resolving any dispute between them with regard to the return of the deposit to the landlord or tenant or divided between both, at the termination of a tenancy.
18. The amount to be paid to the Applicant is not said to refer to any loss suffered by the Applicant. Accordingly, any amount awarded by the Tribunal in such an application cannot be said to be compensatory. The Tribunal in assessing the sanction level has to impose a fair, proportionate and just sanction in the circumstances, always having regard to the purpose of the 2011 Regulations

and the gravity of the breach. The Regulations do not distinguish between a professional and non-professional Landlord. The obligation is absolute on the Landlord to pay the deposit into an Approved Scheme.

19. In assessing the amount awarded, the Tribunal has discretion to make an award of up to three times the amount of the deposit, in terms of Regulation 10 of the 2011 Regulations. The Tribunal considered that the Respondent's failure was not wilful. The Tribunal noted that the Respondent had correctly admitted his breach of the Regulations in this regard. However, the Tribunal also noted that the deposit had remained unprotected for the full duration of the tenancy. He was a professional landlord and should have appreciated that the duty on him was an absolute duty to pay the deposit into an approved scheme. His company SGLProperty had ignored the Applicant's enquiries after the deposit. The Applicant had to take advice from Shelter and carry out enquiries in an attempt to trace her deposit. This had caused her anxiety and she had had to take on extra work to cover the possibility that she would not get the deposit returned to her.

### **Decision**

20. In all the circumstances, the Tribunal was not inclined to order the maximum amount of three times the Tenancy Deposit. The Tribunal considered that a fair, proportionate and just amount to be paid to the Applicant was £937.50 and accordingly made an Order for Payment by the Respondent to the Applicant. The Tribunal did not award any expenses against the Respondent.

### **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.**

**Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.**

S Evans

**Shirley Evans**  
**Legal Member/Chair**

**13 December 2018**  
**Date**