

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

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 and Sections 120-122 of the Housing (Scotland) Act 2006**

**Chamber Ref: FTS/HPC/PR/18/2048**

**Re: Property at 3/5 Dickson Street, Edinburgh, EH6 8RJ (“the Property”)**

**Parties:**

**Mr Manuel Williams, 30/2 West Crosscauseway, Edinburgh, EH8 9JP (“the Applicant”)**

**Ms Ava Grauls, 26/2 Gosford Place, Edinburgh, EH6 4BH (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a hearing, determined that the application should be granted and made an Order requiring the Respondent to pay to the Applicant the sum of £250.**

**Background**

By application received on 9 August 2018, the Applicant sought an Order for Payment against the Respondent. The application was accompanied by a copy Short Assured Tenancy Agreement commencing on 1 October 2017 at a rent of £700 per month. The Agreement provided for a deposit of £800, which would be paid into a tenancy deposit scheme within the timescales laid out in the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”).

**Case Management Discussion**

A Case Management Discussion was held at George House, 126 George Street, Edinburgh on the morning of 14 December 2018. The Applicant was represented by Rona Munro of The Advice Place, Edinburgh University Students Association. The Respondent was present at the Case Management Discussion.

The Respondent told the Tribunal that she was a first-time landlord and that she had dealt with the deposit in the way she had been used to as a tenant herself in England

and, accordingly, had lodged the deposit in a separate bank account. She had only become aware of the 2011 Regulations when the Applicant had vacated the Property and a discussion was taking place about the return of the deposit. She had by then refunded £700, but had retained £100 as, on close inspection, deep cleaning was required. When she was made aware by the Applicant that she should have placed the deposit in an approved scheme, she had immediately repaid the balance of £100. The last payment of rent had been short, but she knew that the Applicant was a poor student, so she had not pursued the shortfall. She accepted she had been in the wrong in failing to lodge the deposit and that ignorance of the law was no excuse.

The Tribunal pointed out to the Respondent that the style of lease she had used specifically stated that the deposit would be paid into a tenancy deposit scheme and the Respondent said that she had found a style of Short Assured Tenancy on the internet. She had since passed the letting of the Property to a letting agency rather than try to manage it herself.

The Applicant's representative told the Tribunal that the crux of the matter was that the checkout was not performed in the way it would have been done had the deposit been lodged as required by law. No photographs, for example, had been taken to show the condition of the Property. The Applicant did dispute the cleaning charge and he had felt uncomfortable dealing directly with the person who held the deposit rather than with an independent third party. His deposit had not been protected.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations states that the Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it would make a decision without a hearing.

Regulation 3(1) of the Tenancy Deposit Scheme (Scotland) Regulations 2011 provides 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 provide the tenant with certain required information. Under Regulation 10, if satisfied that the landlord did not comply with any duty under 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 considered all the evidence before it. The Tribunal accepted that this was the first time the Respondent had let a property and that, having experience limited to the English system, she had genuinely been unaware of the 2011 Regulations until her omission had been pointed out to her by the tenant after the lease came to an end. The Tribunal noted that she accepted that her ignorance of the law was no excuse. The Tribunal also noted that the Respondent had repaid the balance of £100 whenever she discovered that she had failed to comply with the requirement to lodge the deposit in an approved scheme and that, in the light of that, had decided to hand over the management of the letting to a letting agency. The deposit had been held in a separate account, as that was what the Respondent thought was required. Nevertheless, the Tribunal held that the deposit had been at risk throughout the period of the tenancy and the Applicant had been denied the opportunity he would otherwise have had to dispute the proposed retention in respect of the cleaning at the end of the tenancy. The Tribunal was of the view that

the Respondent's omission had been inadvertent, but that this had caused inconvenience and upset to the Applicant, although he had not suffered any financial loss. Having considered all the evidence before it, the Tribunal considered that an Order for Payment of £250 was appropriate in all the circumstances of the case.

### **Decision**

The Tribunal determined to decide the application without a hearing, to grant the application and to make an Order requiring the Respondent to pay to the Applicant the sum of Two Hundred and Fifty Pounds.

### **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.

G Clark

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**Legal Member/Chair**

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**Date**

14 December 2018