



**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/18/2304**

**Re: Property at 17 Kate Kennedy Court, James Street, St Andrews, KY16 8YA  
("the Property")**

**Parties:**

**Mr Jack Dunham, Mr Malcolm Girand, Tigh Na Lochan, Lintrathen, By  
Kirriemuir, Angus, DD8 5JH; C/O Tigh Na Lochan, Lintrathen, By Kirriemuire,  
Angus, DD8 5JH ("the Applicants")**

**Mr Paul Finlayson, Four West Acres, St Andrews, KY16 9UD ("the  
Respondent")**

**Tribunal Members:**

**Graham Harding (Legal Member) and Frances Wood (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined that the applicants were entitled to an order for payment  
by the Respondent in the sum of £2760.00 being two times the amount of the  
Tenants' deposit.**

**Background**

1. By application dated 27 August 2018 the Applicants applied to the Tribunal complaining that the Respondent had failed to lodge the Applicants' deposit in respect of their lease of the property in an approved tenancy deposit scheme. The applicants submitted a copy of the Tenancy agreement along with copy emails and messages and copy bank statement.
2. By Notice of Acceptance dated 2 October 2018 a legal member of the Tribunal with delegated powers accepted the application and referred it to a Tribunal.

3. A Case Management Discussion was assigned to take place at Anstruther Town Hall on 15 November 2018.
4. The Applicants' representative Mrs Fiona Dunham lodged written representations in advance of the Case Management discussion as did the Respondent's representative, Mrs Geraldine Finlayson.
5. At the Case Management Discussion it was accepted that the Respondent was in breach of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (the 2011 Regulations). The respondent was directed to lodge the Applicants' deposit in an approved scheme within 14 days and the case was continued to a hearing to take place in St Andrews Town Hall on 18 January 2019.
6. The Applicants' representative lodged further written representations in advance of the hearing.

#### The Hearing

7. The Hearing took place on 18 January 2019 in St Andrews Town Hall. It was attended by the First Applicant Mr Jack Dunham represented by his mother Mrs Fiona Dunham and by Mrs Geraldine Finlayson, the Respondent's mother and representative, supported by her husband Mr George Finlayson. The Respondent was not in attendance.
8. The Tribunal heard from Mrs Finlayson in response to the further written representations submitted by Mrs Dunham. Specifically it was disputed that the previous tenant Mr Aspinwall had commenced his tenancy had commenced his tenancy on 1 July 2016. Mrs Finlayson was unable to comment on the dates shown on the documentation she had provided to the Tribunal from the Letting Protection Service Scotland that appeared to show that Mr Aspinwall's tenancy had commenced on 1 July 2016 but his deposit had not been lodged with the scheme until after 17 January 2017 when he registered with the scheme administrators.
9. With regards to the Respondent having been registered as landlord since 2015, Mrs Finlayson was unable to comment other than to say that as far as she was aware her son had only let the property for the first time to the previous tenant Mr Aspinwall. Mrs Dunham however pointed out that this did not sit with the advert on Studentpad that suggested that previous students had stayed at the property for three years. Mrs Finlayson said that her son was no longer letting the property to students but was renting it for holiday lets.
10. Mrs Finlayson explained that there had been unusual circumstances that had led to the Applicants' deposit not being lodged. The Applicants had wanted to lease the property well in advance of the entry date at a time when her son was in London and she and her husband were abroad. It had been agreed that the applicants would attend at her husband's office to sign the lease and

pay the deposit. For some reason payment of the deposit could not be made into her son's letting account so it was agreed that it should be paid into her own personal account. Due to an oversight the deposit remained in her bank account and was never transferred to her son. She accepted it was her mistake. She accepted that her son ought to have asked for the funds and lodged the deposit but said that at the time he may not have been aware that there were new tenants for the property.

11. It was accepted that the Applicants did not ask where the deposit had been lodged and that the fact it had not been lodged in a scheme only came to light when this was raised as the tenancy came to an end.
12. Mrs Finlayson said that following discovery of her error she had offered to forgo any claim for withholding any of the deposit and offered to repay it in full. This offer had not been accepted.
13. It was confirmed that the deposit had now been lodged with LPS Scotland but adjudication had not yet taken place. Mrs Dunham pointed out that her son had not been given the requisite notice in terms of Regulation 3 although that did not form part of the current application to the Tribunal.
14. The parties were asked by the Tribunal to suggest what a reasonable sanction might be. Mrs Finlayson suggested that it would not be appropriate to award the maximum but accepted that there should be a penalty. Her son was not a rogue landlord who sought to take advantage of students. For her part Mrs Dunham said that the regulations were there to protect tenants and deposits had to be lodged properly. There could not be one law for one and another for another. Whilst the Applicants could have asked earlier as to where their deposit was they were not under an obligation to do so. It was up to the landlord to comply with the regulations. When she had raised the issue with Mrs Finlayson there had been no offer of an apology. Mrs Dunham said she was content to leave the level of sanction to the Tribunal.

#### Findings in Fact

15. The applicants paid the Respondent a deposit of £1380.00 on 7 March 2017.
16. The Tenancy commenced on 1 September 2017 and endured until 30 June 2018.
17. The Respondent failed to lodge the Applicants' deposit in an approved Tenancy Deposit Scheme throughout the period of the tenancy.
18. The deposit was lodged in an approved scheme on the direction of the Tribunal on 19 November 2018.
19. The Respondent registered with Letting Protection Scheme Scotland on 17 January 2017.

20. The Respondent leased the property to Mr Arkady Aspinwall and obtained a deposit of £1000.00 on 1 July 2016.

21. The Respondent is no longer renting the property on long lets but is renting the property for holiday lets.

#### Reason for Decision

22. It was accepted that the application was brought timeously in terms of Regulation 9(2) of the 2011 Regulations.

23. It was agreed that the Respondent had breached Regulation 3 of the 2011 Regulations and therefore in terms of Regulation 10 the Tribunal must impose a sanction of up to three times the deposit paid by the Applicants upon the Respondent.

24. In arriving at its decision the Tribunal took account of all of the facts and circumstances provided both at the hearing and in the written representations and documents provided by the parties' representatives.

25. In determining what a fair, proportionate and just sanction in the circumstances of the application should be the Tribunal took account of the fact that the Respondent's mother failed to transfer the funds paid by the Applicants into the Respondent's letting account due to an oversight. The Tribunal also acknowledged that the Respondent is not a professional landlord. However, the 2011 Regulations are in place to protect tenants and must be followed and those who do not must face the consequences. The Applicants' deposit was unprotected throughout the whole period of the tenancy and it does appear that there may have been a previous failure on the part of the Respondent to lodge a deposit timeously.

26. Balancing these competing factors and in an effort to determine a fair, proportionate and just sanction in the circumstances the Tribunal considers that the sum of £2760.00 (two times the deposit) is an appropriate sanction to impose.

#### Decision

27. The Tribunal finds the Applicants entitled to payment by the Respondent in the sum of £2760.00.

#### 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.**

Graham Harding

Legal Member/Chair

Date

18 January 2019