



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under the Tenancy Deposit Schemes
(Scotland) Regulations 2011 (“the Regulations”)**

Chamber Ref: FTS/HPC/PR/18/2404

Re: Property at 11 Langhaul Avenue, Crookston, Glasgow, G53 7RW (“the Property”)

Parties:

Mr Edmund Reavey, 61 Langhaul Road, Crookston, Glasgow, G53 7SE (“the Applicant”)

Ms Sharon Wightman, Flat 0/1, 179 Parklands Oval, Glasgow, G53 7UF (“the Respondent”)

Tribunal Members:

Patricia Pryce (Legal Member) and Janine Green (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the Respondent to the Applicant in the sum of ONE THOUSAND NINE HUNDRED POUNDS (£1,900) STERLING.

- **Background**

The Applicant attended the hearing along with two representatives, namely, Ms Rebecca Tait and Ms Kudakwashe Chinyani who were both from Strathclyde University Law Clinic. The Respondent attended and was represented by Mr Kenneth Lang, Solicitor.

Ms Valerie Rushford attended as a supporter for the Respondent.

- **The Hearing**

Preliminary Issues:-

1. The Applicant had failed to advise the Tribunal timeously that he intended to bring representatives, a witness, a mandate signed by his wife and late productions.

The Applicant's representatives submitted that there had been difficulties within the law clinic wherein their supervisor had not checked their work. Their supervisor had subsequently suffered a bereavement. This had led to a delay. The Applicant himself submitted that he should have instructed the law clinic earlier.

Mr Lang did not object to the late productions as he had seen most of them before and there was no prejudice to his client. However, he did not consider that there was a reasonable excuse in terms of Rule 22 of the Tribunal's Rules of Procedure for the late production of the documents.

The Tribunal adjourned to considered matters.

The Tribunal reconvened. The Tribunal determined that, in terms of its overriding principle to act justly, it required to ensure that parties were on an equal footing procedurally. The Respondent was represented by a solicitor of experience whereas the Applicant was represented by two volunteer law students. In addition, the Tribunal required to give proper consideration of the case. In light of this, the Tribunal determined to allow the Applicant's late productions, representatives, the mandate and the witness in the interests of fairness and justice.

The hearing continued.

It was a matter of agreement between the parties that the Respondent had failed to lodge the Applicant's deposit of £950 with a registered scheme from December 2016 until 17 April 2018. It was a matter of agreement between the parties that the tenancy agreement between the parties ran from 16 December 2016 until 21 June 2018.

Reference is made to the Case Management Note of 14 January 2019 which is referred to for its terms and repeated herein.

The only issue between the parties in respect of the hearing was the amount that the Respondent should be required to pay in terms of Regulations 9 and 10 of the Regulations.

Mr Lang submitted that his client had always intended to sell the property. However, a family member asked her if she would be prepared to rent the property to the Applicant, his wife and their four children. The matter was more complex as the Applicant and his wife wished to buy the property from the Respondent. The Applicant paid the Respondent the deposit but she forgot all about it. She suffered ill-health and Christmas had come around. She did not consider the urgency as she thought that the property would be sold to the Applicant.

Mr Lang explained that relations soured between the parties and it became apparent that no sale would take place. The deposit was then raised as an issue by the Applicant. As soon as this was raised in April 2018, the

Respondent lodged the deposit in a registered scheme. She accepts that this was very late.

Mr Lang submitted that his client was not a “professional” landlord but simply an amateur landlord. She was not fully experienced in these matters. In addition, the Applicant received return of the full deposit. He made reference to the case of *Jenson v Fappiano* 2015 WL 376066 to support his submissions.

The Applicant submitted that the Respondent had gone through two Christmases without paying the deposit into a scheme. The Respondent was already known to the scheme as she had previously lodged a deposit with them. The Applicant submitted that he did not think that the deposit would ever have been paid into a scheme if he had not raised it with the Respondent.

- **Findings in Fact**

1. The parties entered into a lease in respect of the property at 11 Langhaul Avenue, Glasgow on 16 December 2016 until the 21 June 2018.
2. The monthly rent in respect of the property was £950 per calendar month.
3. The Applicant paid to the Respondent at the start of the lease £950 by way of a deposit.
4. The Respondent failed to lodge the deposit with an approved deposit scheme until 17 April 2018.
5. The Applicant received return of the deposit in full at the end of the lease.

- **Reasons for Decision**

The Tribunal considered all of the matters before it. This was an unusual situation whereby parties were genuinely considering the sale and purchase of the property before relations soured between them. It was a matter of admission by the Respondent that she had failed to lodge the deposit for 16 months. The Tribunal accepted her submission that she had forgotten to lodge this as she was more directed at that time towards selling the property to the Applicant. It was accepted by both parties that the only issue for the Tribunal was how much in terms of an order the Respondent should pay to the Applicant in light of her failure to lodge the deposit timeously. The Tribunal, however, noted that the Respondent had previously lodged a deposit with an approved scheme so she was, by her own admission, aware of the requirement to lodge the deposit. The Tribunal acknowledged that the Respondent is not a “professional” landlord. However, the purpose of the Regulations is to protect the deposit paid by a tenant. For 16 months, the deposit remained unprotected. In contrast, the Applicant was able to make

use of the Deposit Resolution scheme which allowed him to receive full return of his deposit.

On balance, the Tribunal considered that it would be appropriate to order the Respondent to pay double the original deposit, that is, £1,900. The Tribunal noted that the Applicant sought three times the original deposit. However, the Tribunal considered that, while the conduct of the Respondent was not ideal in this matter, she did place the deposit in a scheme when this matter was raised by the Applicant. This allowed the Applicant to use the scheme's resolution mechanism for a successful return of his deposit. Had the money not been so placed, the Tribunal would have been minded to grant an order for three times the amount of the deposit.

- Decision

The Tribunal orders the Respondent to pay to the Applicant the sum of £1,900 as noted above.

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.

Patricia Pryce

18 March 2019

Legal Member/Chair

Date