

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit
Scheme (Scotland) Regulations 2011 (Regulations)**

Chamber Ref: FTS/HPC/PR/18/2805

Re: Property at 87/21 Pennywell Gardens, Edinburgh, EH4 4TE (“the Property”)

Parties:

**Miss Agnieszka Wojcik, Mr Mariusz Pawlowski, 32 Muirhouse Park, Edinburgh,
EH2 4RR; 32 Muirhouse Park, Edinburgh, EH4 4RR (“the Applicant”)**

Mrs Arti Homa, 24 Longanlea Road, Edinburgh, EH7 6NW (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the sum of £650 to the Applicant in terms of Regulation 10.

Background

This is an application under Regulation 9 for payment in respect of an alleged failure to pay the deposit in to an approved scheme.

The Tribunal had regard to the following documents:

1. Application received 19 October 2018;
2. Tenancy Agreement dated 9 September 2017;
3. Emails from Letting Protection Scotland, Safe Deposit Scotland and Deposit Scotland confirming no deposit paid in to Scheme;
4. Notice to Quit showing date to quit as 8 September 2018.

Case Management Discussion (CMD)

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The case called for a CMD on 15 February 2019. Both Parties were present and the Respondent was accompanied by her husband. An Interpreter was present for the Applicants.

So far as material the following facts were admitted:

1. The Parties entered in to a tenancy of the Property from 9 September 2017 until 8-10 September 2018;
2. A deposit of £650 was paid on 9 September 2017;
3. At the end of the tenancy the Respondent unilaterally deducted £426.20 from the deposit in respect of damages and arrears;
4. The balance of the deposit was returned to the Applicants;
5. The deposit was unprotected for the duration of the tenancy.

Given that the failure to protect the deposit was admitted the Tribunal went on to hear from the Parties with regard to any mitigating circumstances. After having afforded both Parties the opportunity to be heard the Tribunal found the following facts to be established:

1. The Respondent was unaware of the requirement to protect the deposit;
2. The Respondent has let this Property since 2013 and never protected a deposit;
3. The Respondent has 9 properties which are let none of whom had a deposit protected;
4. The Respondent has now taken action on all of the Properties to protect the deposit.

Reasons

The Tribunal considered and adopted the approach of the Court in the case of ***Russell-Smith and Others v Uchegbu [2016] SC EDIN 64***. The Tribunal assessed the appropriate level of sanction in a fair, proportionate and just way having regard to the circumstances of the case, the purpose of the Regulations and the gravity of the breach.

It was to the credit of the Respondent that she had admitted non-compliance, explained her lack of awareness of the Regulations and taken remedial action now that she is. The Tribunal also took in to account the length of time the deposit was unprotected and the fact that this had been used to the Respondent's advantage when deducting £426.20 from the deposit.

Every case will depend on its own specific facts and in the end of the day the Tribunal must exercise judicial discretion. Having done so the Tribunal determined that the level of sanction in the particular circumstances of this case should be £650.

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

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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.

Mr Alan Strain



Legal Member/Chair



Date