

**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 Regulation 9 of the Tenancy  
Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/18/2859**

**Re: Property at 11B High Street, Dysart, Fife, KY1 2UG (“the Property”)**

**Parties:**

**Ms Isobel Fury, C/o 274 Overton Mains, Kirkaldy, Fife, KY1 3JS (“the Applicant”)**

**Mr Waseem Aslam, formerly residing at 34 Eardley Crescent, Dunfermline, Fife, KY11 8NE and whose current whereabouts are unknown (“the Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

This is an application for a compensation order dated 15<sup>th</sup> October 2018 and brought in terms of Rule 103 (Application for order for payment where landlord has not paid the deposit into an approved scheme) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant seeks payment of compensation in respect of an alleged failure by the Respondent to pay the deposit she asserts she provided of £450.00 in relation to the tenancy agreement into an approved scheme within 30 days of receipt of that sum.

The Applicant has provided with her application copies of the lease agreement, the receipt given for the deposit, and various extensive text and e-mail correspondence and photographs of the Property.

The Respondent has left his last known address, and his current whereabouts are unknown. Service was validly effected by advertisement in terms of Rule 6A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and the Tribunal was provided with the Certificate of Service by advertisement.

A Case Management Discussion was held on 15<sup>th</sup> April 2019 at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy. The Applicant appeared, and was not represented. The Respondent did not appear, nor was he represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal confirmed with the Applicant that the tenancy agreement is erroneous regarding narration of the parties on page one, where it lists the Applicant as landlord and the section identifying the tenant is left blank.

The Tribunal confirmed with the Applicant that it is her signature which appears on each page of the lease agreement identified as tenant, and noted that the Respondent signed on the final page as landlord.

The Tribunal also confirmed with the Applicant that the photographs of the Property and the text message and e-mail correspondence do not have any bearing on the issue in this application, namely whether or not the landlord has lodged the tenancy deposit in an approved scheme. The Applicant had lodged these simply as background to explain the circumstances around the tenancy and her departure from the Property.

The Tribunal noted that there is no identification of the sum to be paid as deposit in the tenancy agreement, but took note of the deposit receipt from the landlord which appears to confirm that £450.00 was paid to him by the Applicant.

The Tribunal explained to the Applicant that it required certain further information from the Applicant to be produced in order that it could deal with this application.

Firstly, the Tribunal noted that no evidence had been produced regarding confirmation from either the Respondent or each of the three approved schemes that the Respondent had failed to pay the tenancy deposit into an approved scheme within 30 days of receipt.

The Applicant explained that the landlord had never confirmed that he had failed to lodge the deposit with an approved scheme, and that she had confirmed this with each of the three approved schemes by telephone call.

Secondly, an application under rule 103 must be brought no later than 3 months from the end of the tenancy in terms of Regulation 9 of the *Tenancy Deposit Schemes (Scotland) Regulations 2011*.

Though it appeared from the material provided that the Applicant did not leave the Property until the middle of July 2018, she should confirm the precise date when she moved out of the Property in order to confirm that this application is timeous.

Once this information had been provided, the Tribunal would be in a better position to consider this application and reach a decision upon it.

Rule 28 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended allows the Tribunal discretion on its own initiative to adjourn a hearing.

For these reasons, the Tribunal adjourned the Case Management Discussion and set a further Case Management Discussion to allow the Applicant to provide the information above-noted.

### **The continued Case Management Discussion**

A continued Case Management Discussion was held on 8<sup>th</sup> August 2019 at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy. The Applicant again appeared, and was not represented. The Respondent again did not appear, nor was he represented.

At the continued Case Management Discussion, the Applicant explained that she had ceased occupying the Property in June to early July 2018.

In response to questions from the Tribunal, the Applicant confirmed that she had given one month's notice in writing to the Respondent that she was terminating the tenancy.

The Applicant referred the Tribunal to a photograph which she had taken of the written notice, which was dated 9<sup>th</sup> June 2019, was addressed to the Respondent, and which stated that she was terminating the tenancy as at 8<sup>th</sup> July 2018.

The Applicant explained that she had been in text communication with the Respondent and had indicated to him that she wished to terminate the tenancy, and that the Respondent had asked her to give written notice.

The Applicant had then handwritten the notice, taken a picture of it, and sent it to the Respondent via facebook. She had arranged for the Respondent's brother to collect the principal notice from her, but he had failed to do so. The Applicant understood that the written notice had terminated the tenancy as at 8<sup>th</sup> July 2018.

### **Reasons for Decision**

Regulation 9 of the *Tenancy Deposit Schemes (Scotland) Regulations 2011* provides as follows:

"9.—

(1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made no later than 3 months after the tenancy has ended.”

The Applicant has brought this application in respect of an alleged breach of Regulation 3 with regard to an alleged deposit. In terms of Regulation 9(2), such application must be brought no later than 3 months after the tenancy has ended.

The lease agreement provides at clause 10 that the tenancy may be ended by the tenant giving the landlord one month’s notice in writing to terminate the tenancy at its termination date, which was 12<sup>th</sup> October 2018.

Clause 15 of the lease agreement provides that if the tenant decides to leave before the end of the tenancy, they will be liable for the rent up until the end of the tenancy or until such time as a new tenant’s lease begins, whichever comes sooner, and will also be liable for the landlord’s remarketing costs.

Clause 15 appears to allow the tenant to terminate the lease early, but renders the tenant liable if they do so for rental until the earlier of the *ish* of the lease or the date of commencement of a new lease agreement with a replacement tenant.

The Applicant has confirmed that she terminated the lease as at 8<sup>th</sup> July 2018, and confirmed that so far as she was aware, the landlord had accepted that termination.

That being so, this application dated 15<sup>th</sup> October 2018 has been brought later than 3 months after the tenancy ended, and accordingly is in breach of the provisions of Regulation 9(2) which provides that such applications must be brought no later than 3 months after the tenancy ended.

## **Decision**

For the foregoing reasons, the Tribunal will dismiss this application upon the basis that it has not been brought timeously.

## **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.**

Neil Kinnear

**Legal Member/Chair**

08/08/19

**Date**