



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**Chamber Ref: FTS/HPC/PR/19/3634**

**Re: Property at 25 Flat 2 Leven St, Edinburgh, EH3 9LH (“the Property”)**

**Parties:**

**Miss Joanne Fullerton, Orchard House, Millfield, Buncrana, Donegal, Ireland (“the Applicant”)**

**Mr Garry Wright, 79 Kingfisher Place, Dunfermline, KY11 8JN (“the Respondent”)**

**Tribunal Members:**

**Karen Moore (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Payment in the sum of ONE HUNDRED POUNDS (£100.00) be granted.**

1. By application received on 12 November 2019 (“the Application”) the Applicant made an application to the Tribunal for an order in terms of Rule 103 of the Rules asserting that the Respondent had failed to comply with Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).
2. The Application contained copy correspondence from the authorised deposit schemes confirming that no deposit was held by them for the Property and the Applicant.
3. On 25 November 2019, a legal member of the Tribunal with delegated powers of the Chamber President accepted the Application and a Case Management Discussion (“CMD”) was fixed for 24 January 2020 at George House, 126, George Street, Edinburgh, EH2 4HH. The CMD was intimated to both Parties.

4. The Respondent lodged written representations with Tribunal which were copied to the Applicant. The representations comprised photographs of the Property said to be taken at the end of the tenancy and a print showing deposits lodged with My Deposits Scotland by the Respondent in respect of other properties. The Applicant emailed the Tribunal refuting the condition of the Property.

#### **Case Management Discussion**

5. The CMD took place on 24 January 2020 at the said George House. Applicant was not present and was not represented. The Respondent was present and accompanied by his wife as a supporter in terms of Rule 11 of the Rules.
6. The Tribunal enquired with the Chamber administration and no contact had been made by the Applicant to explain her non-attendance and there had been no request to participate by telephone conference call.
7. The Tribunal had regard to the Rules and in particular Rule 17(4) which states that the Tribunal "may do anything at a case management discussion which it may do at a hearing" and Rule 29 which states that, if satisfied that intimation of the hearing has been given, the Tribunal may proceed with the parties present and all the information before it. Accordingly, as there was sufficient information to determine the Application, the Tribunal proceeded with the CMD in the absence of the Applicant.
8. The Respondent confirmed to the Tribunal that he had taken a deposit of £650.00 from the Applicant in respect of the tenancy at the Property and had failed to lodge this with an authorised deposit scheme as required by the 2011 Regulations. The Respondent explained that this was a genuine oversight on his part and referred to the print from My Deposits Scotland showing deposits lodged by him. The Respondent also evidenced the deposit as being held in a Bank of Scotland savings account by showing the Tribunal an on-line bank screen. He explained that the deposit had not been returned as it was being held pending discussion with the Applicant regarding end of tenancy damage and cleaning costs.
9. The Tribunal explained to the Respondent that Regulation 3 of the 2011 Regulations states that "*A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy (a) pay the deposit to the scheme administrator of an approved scheme; and (b) provide the tenant with the information required under regulation 42*" (Regulation 42 requires information on where the deposit is held to be given to the tenant). The Tribunal also explained that Regulation 10 of the 2011 Regulations states "*If satisfied that the landlord did not comply with any duty in regulation 3 the tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit*". Therefore, as the Respondent has not complied with Regulation 3 of the 2011 Regulations, the Tribunal must grant a monetary order of, in effect, compensation to the Applicant and that the issue for the Tribunal is the amount of the order.

### **Findings in Fact**

10. From the Application and the CMD, the Tribunal found that the Respondent had failed to lodge this with an authorised deposit scheme as required by Regulation 3 the 2011 Regulations and so had failed to provide the Applicant with the information on the where the deposit was held in terms of Regulation 42 of the 2011 Regulations.
11. The Tribunal found that this was a genuine oversight on his part.
12. The Tribunal found that it was the Respondent's usual practice to comply with the 2011 Regulations and that the deposit was held by him in his Bank of Scotland savings account.

### **Issue for Tribunal**

13. Having found that the Respondent had failed to comply with Regulation 3 the 2011 Regulations, the Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "may do anything at a case management discussion which it may do at a hearing, including make a decision". Accordingly, I determined to make an order for payment.
14. The issue for the Tribunal, therefore, was the amount of the order to be made in terms of Regulation 10 of the 2011 Regulations.

### **Decision and Reasons for Decision**

15. The Tribunal had regard to all of the matters before it being the Application with supporting documents, the written representations of the Parties and the submissions by the Respondent at the CMD. The Tribunal accepted the Respondent's position that his failure to comply had been an oversight and accepted that his usual practice was to comply with the 2011 Regulations. The Tribunal accepted that he held funds relating to his property portfolio separately from his personal funds. The Tribunal accepted that his intention is to return the deposit in full or in part depending on the outcome of the discussions with the Applicant in respect of the end of tenancy process.
16. In all the circumstances, the Tribunal took the view that the failure by the Respondent was not a flagrant or intentional breach of the 2011 Regulations and that there had been no real prejudice to the Applicant and so an order in the sum of £100.00 is appropriate.

### **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.

K. M  
Legal Member/Chair

24 January 2020  
Date