

**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 Sections 120-122 of the Housing (Scotland) Act 2006, Section 16 of the Housing (Scotland) Act 2014 and Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/18/2744**

**Re: Property at 26 3F3 Marchmont Crescent, Edinburgh, EH9 1HG (“the Property”)**

**Parties:**

**Miss Diana Sa da Bandeira, Mr Joan Casamitjana, c/o Gordon Maloney, 96/7 Marchmont Road, Edinburgh, EH9 1HR (“the Applicant”), represented by Mr Gordon Maloney of Living Rent Edinburgh, 96/7 Marchmont Road, Edinburgh EH9 1HR**

**Mrs Jean Nagle, Stumpers, Pine Avenue, Camberley, Surrey, GU15 2LY (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member) and Ann Moore (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent had failed to comply with the duty set out in Sections 120-122 of the Housing (Scotland) Act 2006 and that the Respondent should be ordered to pay to the Applicant the sum of Two Thousand Five Hundred Pounds.**

**Background**

By application, received by the Tribunal on 16 October 2018, the Applicant sought an Order for Payment by the Respondent to the Applicant of the sum of £2,940, being three times the deposit of £980 paid by the Applicant to the Respondent at the commencement of a tenancy of the Property in September 2016. The Application stated that the Applicant had stayed in the Property until July 2018, but the deposit had not been lodged with Safe Deposits Scotland until September 2017.

The application was accompanied by a timeline of events, which indicated that a lease of the Property had been signed on 6 September 2016, when the Applicant

moved in, a continuation of the lease had been signed on 1 September 2017, extending the lease to 28 July 2018, the deposit had been lodged with Safe Deposits Scotland on 31 (sic) September 2017, that no confirmation of this had been sent to the Applicant, that the Applicant had first asked the Respondent to provide the deposit protection details on 19 September 2018, that this request had been repeated on 2 October 2018 and that the Respondent had replied on 4 October 2018, admitting that the deposit had not been lodged with a deposit scheme at the outset of the tenancy. The application was also accompanied by copies of the two leases referred to, the first commencing on 6 September 2016, confirmation from Safe Deposits Scotland that the deposit of £980 had been received by them on 25 September 2017, a screenshot of part of a bank statement, showing the transfer of the deposit and the initial rent payment to the Respondent on 15 September 2016, a screenshot taken from the Scottish Landlord Register showing the registered landlord of the Property as Anthony Nagle and copies of e-mail correspondence between the parties between 19 September and 4 October 2018.

On 16 November 2018, the Tribunal advised the Parties of the date, time and venue of a Case Management Discussion and the Respondent was invited to make written representations by 5 December 2018. The Respondent advised the Tribunal by e-mail dated 30 November 2018 that she would be represented at the Case Management Discussion by Mr Neil Campbell of Currie Gilmour & Co, solicitors.

On 5 December 2018, the Respondents' representative, Mr Campbell, lodged written representations by e-mail, stating that the Respondent admitted that she had failed to consign the deposit for the period averred by the Applicant and that she had not been registered as landlord of the Property between 8 February 2017 and 29 June 2018. The Respondent's representative explained that the Respondent had been letting the Property for more than 20 years and that, prior to the instant case, had always complied fully with the changing legislation governing the letting of residential property. The management of the letting, including dealing with deposits, had always been dealt with by the Respondent personally. She had registered as a landlord on 8 February 2014 and this registration had been in force until 8 February 2018, so was in place at the commencement of the tenancy. The Respondent had not received the Council's registration renewal invitation, but as soon as she had realised her registration had lapsed, she had applied successfully for its renewal. The Respondent had consistently and timeously complied with the requirement to lodge deposits until the present case. The delay in consigning the deposit had been a regrettable aberration arising as a result of oversight and not from any wilful failure or bad faith on the part of the Respondent. Although the initial rent and deposit had been sent on by her representatives in good time and by way of separate cheques, the Respondent had at that time been dealing with recovery of late rent payments from another tenant of the Property under a lease which had just ended and she had not noticed that the payments she had received included a deposit. The Respondent had then lost sight of the matter due to anxiety over serious surgery her husband had undergone in November 2016 and January 2017 and had been abroad for an extended period from March till early May 2017. It was when the Applicant renewed the lease in September 2017 that she had realised the deposit had not been consigned and she reacted promptly to arrange for the funds to be consigned with Safe Deposits Scotland. The Respondent's representative stated that, whilst the Respondent acknowledged her failure in this instance, the deposit had not been at risk at any time and the Applicant had not suffered any loss or other prejudice. The Respondent had not wittingly or flagrantly disregarded the relevant regulations.

The Case Management Discussion took place at George House, 126 George Street, Edinburgh on 10 December 2018. The Applicant was present and was represented by Mr Gordon Maloney of Living Rent Edinburgh. The Respondent was neither present nor represented. The Legal Member of the Tribunal decided that, as there had been some engagement by the Respondent with the Tribunal, he would fix a full hearing, to enable the Respondent to attend, with or without legal representation and to enable the Applicant to lodge any further documentation in support of the application.

Further written representations were received on behalf of the Applicant on 19 December 2018. The Applicant contended that the Respondent was misleading the Tribunal in stating that she had been re-registered as landlord of the Property on 29 June 2018. A printout from the Register (which had also been provided with the Respondent's written representations) showed that, whilst an application had been submitted on 29 June 2018, the registration had not in fact been renewed until 23 November 2018. It was accepted that the funds had been consigned by the Respondent on discovery of her failure, she had failed to give the Applicant written confirmation of the details of the deposit scheme, the amount lodged and a number of other details and she had ignored the Applicant's e-mail requesting this information until after the tenancy had ended. The Respondent had, on 4 October 2018, claimed that she had not noted the "small print", but the requirement to provide details was clearly stated under the Regulations was not mere "small print". The Respondent had also provided Safe Deposits Scotland with incorrect contact details for the Applicant, meaning that the Applicant did not receive any correspondence from that company until they made contact themselves. The Applicant as of the view that this was done deliberately to frustrate the Applicant's ability to dispute claims at the end of the tenancy.

The correspondence from the Respondent's representative had implied that the Respondent had made a one-off mistake through honest oversight, but it was clearly part of a pattern which demonstrated that the Respondent does not appreciate or take seriously her legal responsibilities as a landlord. The Respondent had made a number of spurious claims on the deposit without any basis whatsoever, as demonstrated by the fact that they had been rejected in their entirety by Safe Deposits Scotland when the dispute process finally reached its end. The Respondent had also resorted on a number of occasions to nasty and extremely unprofessional behaviour in correspondence with the Applicant. There had also been insinuations that the delay in lodging the deposit had been due to confusion and a lack of clarity was somehow the fault of the Applicant, but it was clear that any confusion was not the Applicant's fault. It was not true that the deposit had never been at risk. Had the Applicant not chosen to renew the tenancy on 1 September 2017, the deposit would have been unprotected and, given the decision of Safe Deposits Scotland that the claims on the deposit made by the Respondent were not justifiable, it was reasonable to assume that the Respondent would have made similar unjustifiable claims and, had that happened, the tenants would not have had recourse to third-party oversight.

### **The Hearing**

A hearing took place at George House, 126 George Street, Edinburgh on the afternoon of 7 January 2019. The Applicant, Miss Diane Sa da Bandeira, was present and as represented by Mr Gordon Maloney of Living Rent Edinburgh. The

Respondent was represented by Mr Neil Campbell of Currie Gilmour & Co, solicitors, Edinburgh.

The Legal Chair of the Tribunal advised the Parties of the purpose of the hearing and it was agreed that the focus should be on the written representations made on behalf of the Respondent on 5 December 2018 and the Applicant's response to these, made on 19 December 2018, as it was agreed that the Respondent had failed to comply with the obligation to lodge the deposit within 30 working days of the commencement of the tenancy.

Mr Campbell advised the Tribunal that the interpretation of the printout relating to the date landlord registration/re-registration was not straightforward, but accepted that the correct date might be 23 November 2018, although he confirmed that no fee had been charged by the Council to the Respondent for the process and said that there had been no intention to mislead. Mr Maloney stressed that, irrespective of the correct date, for the majority of the duration of the lease, the Respondent had not been registered.

Mr Campbell conceded that there was no excuse for the Respondent not having passed on the details of the deposit scheme to the Applicant, but referred by way of background to his client's age and the fact that she was not a "professional" landlord. She owned this one letting property and her husband also owned one flat for letting. The Respondent had provided the information to Safe Deposits Scotland by telephone and Mr Campbell suggested that the incorrect noting of the Applicant's contact details might have been a mistake at the recipients' end, but if the Respondent had given the wrong information, she was not seeking to mislead anyone. Mr Maloney said that it was hard to believe that the Respondent could have got both e-mail addresses for both Applicants wrong. He also referred to the assertion of the Respondent in an e-mail of 4 October 2018 that she had failed to notice "small print" when the matter of providing information to tenants was stated so clearly in the legislation. That, he said, cast doubt on the claim that it had been an honest mistake. The failure to give correct e-mail addresses had resulted in a two-month delay in being able to pursue the matter with Safe Deposit Scotland and this had affected them financially.

Mr Campbell then referred to the conclusion by Safe Deposit Scotland that no part of the Respondent's claim for retention of part of the deposit should be upheld, saying that this did not mean the claims were spurious, as the Applicant was contending, but Mr Maloney responded that the conclusion had to be that there had been a pattern of behaviour here. The Respondent had not been registered, had not lodged the deposit, had provided incorrect information to Safe Deposit Scotland and had not provided the Applicant with the information she was required to do provide in terms of the deposit.

Mr Campbell argued that if there was a pattern, it was of a landlord who had been registered for many years, had consigned deposits in previous lettings and was aware of her obligations. She had, however, failed on this one occasion and he felt that the amount to be ordered by way of a payment should be at the lower end, as the maximum figure should be ordered for only the most egregious of failures. There had been no wilful or flagrant disregard of the regulations.

Mr Maloney stated that the Respondent appeared to have 30 years' experience of letting the Property, yet she had failed to re-register as a landlord, had failed to secure a deposit and had failed to fulfil a legal obligation to provide information to the Applicant even when asked to do so. Insofar as there was a spectrum between an

honest mistake on the one hand and deliberately stealing deposits on the other hand, this case fell at the upper end of that spectrum.

### **Reasons for Decision**

Under Regulation 3(1) of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”), a landlord must, within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme and under Regulation 10 of the 2011 Regulations, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal **must** order the landlord to pay to the tenant a sum not exceeding three times the amount of the tenancy deposit. Under Regulation 4 of the 2011 Regulations, the landlord must advise the tenant of the amount of the deposit and where it is lodged.

The Tribunal held that the Respondent had failed to lodge the deposit within the required time period.

The Tribunal noted the representations made by Mr Campbell about the age and ill-health of the Respondent and the fact that she was operating at a considerable distance from Edinburgh, but noted also that she had been operating as a landlord in Edinburgh for many years, during which there had been considerable changes in the legal obligations placed on landlords. Mr Campbell had confirmed that he had sent two cheques to the Respondent at the start of the tenancy, one for the initial rent, minus his firm’s fees, the other for the deposit. As an experienced landlord who had lodged tenancy deposits in the past, the Respondent should have expected the payment and should have been alert to the need to lodge it within 30 working days.

The Tribunal was unable to find that the Respondent had deliberately or wilfully failed to comply with the legislation, or that there was a pattern of behaviour which was calculated to mislead the Applicant or Safe Deposit Scotland, but, noting the decision made by Safe Deposit Scotland, following the claims made by the Respondent against the deposit, the Tribunal was satisfied that the Applicant’s deposit had been seriously at risk throughout the first year of the tenancy and up to 25 September 2017. The Tribunal concluded that the Respondent’s failure was a serious one, made more significant by her ongoing failure to secure the deposit during the first year. The implications for the Applicant were significant and, had the tenancy not continued into a second year, the evidence of the arguments over repayment of the deposit suggested that the Applicant might have experienced great difficulty in securing return of the deposit at that time.

### **Decision**

The Tribunal decided that the Respondent had failed to comply with the requirement to lodge the deposit in terms of Sections 120-22 of the Housing (Scotland) Act 2006 and made an Order for payment by the Respondent to the Applicant of the sum of £2,500.

### **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.

G. CLARK

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Legal Member/Chair

7 January 2019  
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Date