

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
Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/18/1857

Re: Property at 26/2 Braid Crescent, Edinburgh, EH10 6AU (“the Property”)

Parties:

**Mr Guy Milner-Smith, Mrs Emma Milner-Smith, 54 Lime Grove, Edinburgh,
North Berwick, EH39 5NH (“the Applicant”)**

**Mr George Lumsden, 17/4 Tyler Gardens, Edinburgh, EH8 8HS (“the
Respondent”)**

Tribunal Members:

Mark Thorley (Legal Member)

Decision (in absence of the Respondent)

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

BACKGROUND

By application dated 23 July 2018 the applicants applied to the First-tier Tribunal under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The application was accompanied by Form G providing additional information, and three documents comprising a scan of a cheque dated 22 April 2013, a screenshot showing the property being vacated on 7 June 2018 and a further screenshot showing an agreed tenancy end on 7 June 2018.

Subsequently the First-tier Tribunal requested a copy of the Lease. By email dated 24 August 2018 the applicants confirmed that they did not have a copy of the Lease.

Further information was then requested from the applicants by way of letter dated 2 October 2018 requesting an address for the respondent together also with a copy of any other information relating to the tenancy.

Further information was provided by the applicants on 4 October 2018.

On 11 October 2018 the application was accepted for determination by the First-tier Tribunal and a Case Management Discussion assigned.

Sheriff Officers deposited documents at the respondent's address at 17/4 Tyler Gardens, Edinburgh on 15 November 2018 .

CASE MANAGEMENT DISCUSSION

At the Case Management Discussion the applicants attended. There was no attendance by or on behalf of the respondent.

The Tribunal heard from the applicants. No copy Lease was available. Their position was that the property was leased from 1 May 2013 and the rent was £850 per month. A month's deposit of £850 was paid. Reference was made to a cheque deposit which disclosed a cheque stub showing a payment of £1,700 on 24 April 2013 being the rent and deposit for the property at 26/2 Braid Crescent, Edinburgh. A request was made of the respondent to confirm that the deposit had been placed in an approved deposit scheme. The applicants gave evidence that the respondent assured that this was done but never forwarded any details.

The applicants gave notice of their intention to vacate from the property by 8 June 2018. The property was vacated on 7 June 2018. Various text messages refer to the handover of the property. On Friday 8 June 2018 the respondent by way of text indicated "I will conclude this matter when you give me a forwarding address". Connell & Connell Solicitors who had acted on behalf of the respondent were contacted by the applicant. As a result the applicants contacted three approved deposit schemes in Scotland all of whom confirmed they held no deposit for the respondent nor the address in question. On Monday 11 June the deposit was returned via Connell & Connell. The deposit had not been lodged with a deposit scheme for over a period of three years.

No evidence was submitted by the respondent in either oral or written form.

The tribunal had sufficient information to allow it to proceed to deal with the case.

The landlord had failed to pay the deposit into an approved scheme for a period of more than five years. As against that the applicants received the full amount of deposit back. In the circumstances the Tribunal ordered the sum of £1,700 be paid by the respondent to the applicants which represents two times the deposit.

FINDINGS IN FACT

The Tenancy Agreement between the parties was constituted by way of agreement and commenced on 1 May 2013 concluding on 7 June 2018.

A deposit of £850 was paid by the applicants to the respondent.

That deposit was never paid into any approved scheme protecting the deposit.

The deposit was unprotected for a period in excess of five years.

The deposit was returned by solicitors acting on behalf of the respondent to the applicants on 11 June 2018 in full ie within 4 days of the ending of the tenancy

The Tribunal ordered the respondent to pay to the applicants the sum of £1,700 representing two times the deposit.

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.

M Thorley

Legal Member/Chair

7th December 2018.

Date