



**Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/18/0241**

**Re: Property at 53B Rose Street, Aberdeen, AB10 1UB (“the Property”)**

**Parties:**

**Miss Oana Iosif, 49 Harehill Road, Bridge of Don, Aberdeen, AB22 8RH (“the Applicant”)**

**Mr Daniel Buda, 13 1F1 Comley Bank Terrace, Edinburgh, EH4 1AT (“the Respondent”)**

**Tribunal Members:**

**Nicola Irvine (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to the Order for payment.**

**Background**

The Applicant submitted an application seeking an order for payment in terms of Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The Tribunal intimated the application to the Respondent on 19<sup>th</sup> February 2018 and advised her of the date, time and place of today’s case management discussion. In that letter, the Respondent was advised that any written representations he wished to make should be sent to the Tribunal by 9<sup>th</sup> March 2018. The Respondent was also told that he required to attend the case management discussion and was informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and considers the procedure to have been fair. The Tribunal received a bundle of papers from the Respondent. Within the bundle of papers was a statement of the Respondent. In that statement, the Respondent referred to the condition of the property at the end of the tenancy. He stated that he lodged the Applicant’s deposit on 1<sup>st</sup> November 2016 and provided the “Prescribed Information”.

He also stated that on 8<sup>th</sup> January 2018 he “received a confusing message from Safe Deposits Scotland...” and that “the deposit had not been lodged correctly to my surprise...”.

### **The Hearing**

The case management discussion took place in the absence of the Respondent. The Applicant was personally present. She advised that she paid a deposit of £1,150 to the Respondent on 1<sup>st</sup> November 2016. She did not receive a Deposit Protection Certificate. At the conclusion of the tenancy, the Applicant wishes to recover her deposit and intended to use the alternative dispute resolution. She made enquiries with Safe Deposits Scotland and was advised that the deposit of £575 was registered in her name on 1<sup>st</sup> November 2016 but that Safe Deposits Scotland did not receive any funds from the landlord and the registration was subsequently deleted on 8<sup>th</sup> January 2018.

### **Findings in Fact:**

1. The Applicant and the Respondent entered into a Tenancy Agreement which commenced on 1<sup>st</sup> November 2016 and ended on 31<sup>st</sup> December 2017.
2. The Applicant paid a deposit of £575 to the Respondent on 1<sup>st</sup> November 2016.
3. The Respondent provided the Applicant with the Prescribed information about her tenancy deposit in accordance with Regulation 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
4. The Respondent failed to comply with his duty in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations.

### **Reason for Decision**

The Tribunal proceeded on the basis of the written documents which were before it and the information provided by the Applicant at the case management discussion. There was no Deposit Protection Certificate issued to the Applicant. The statement from the Respondent seems to indicate that some kind of error resulted in the deposit not being lodged. However, the fact that the deposit was not lodged has resulted in the Applicant being unable to avail herself of an opportunity to use the alternative dispute resolution offered by Safe Deposits Scotland.

The terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 are mandatory and state “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.”

The Tribunal was satisfied that the Respondent failed to comply with his duties in terms of that regulation. It was the Respondent’s duty to pay the deposit to the scheme administrator and he failed to do that. The Tribunal considered that an appropriate sanction for failure to comply with the duties was to order the Respondent to pay the Applicant £1,150 which represents 2 times the amount of the tenancy 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.**

**Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.**

**N Irvine**

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**Legal Member/Chair**

20.03.2018

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**Date**