



**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/22/0165**

**Re: 39/5 Portland Street, Edinburgh EH6 4BB (“Property”)**

**Parties:**

**Conor Carr, Apartment 605 Leader House Blue, Media City, Salford M50 2AG (“Applicant”)**

**Mairi Macdonald, Tullymet, 40 South Street, Milnathort, Kinross KY13 9XA (“Respondent”)**

**Tribunal Members:**

**Joan Devine (Legal Member)**

**Decision :**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay to the Applicant the sum of £212.**

**Background**

1. The Applicant made an application in Form G ("Application") dated 17 January 2022 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("Rules") stating that the Respondent had failed to timeously lodge a tenancy deposit in an appropriate scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("2011 Regulations"). The documents produced to the Tribunal by the Applicant were:
  - A tenancy agreement dated 16 July 2020 .
  - Email from Safe Deposits Scotland to the Applicant dated 17 January 2022 regarding the Applicant's tenancy of the Property which stated that the deposit was received on 18 January 2021.
  - Screenshot showing a payment of £850 to M K Macdonald on 16 August 2020.

2. A copy of the Application and notification of a Case Management Discussion ("CMD") fixed for 11 April 2022 at 10 am was given to the Respondent by Sheriff Officer on 23 February 2022. In advance of the CMD the Respondent provided a written submission by email dated 15 March 2022.

### **Case Management Discussion ("CMD")**

3. A CMD took place on 11 April 2022 at 10 am by conference call. The Applicant and the Respondent were both in attendance.
4. The Applicant told the Tribunal that the tenancy commenced on 30 August 2020. He said that this commencement date was agreed by email. He said that the tenancy ended on 2 January 2022. He said that the deposit of £850 was paid on 16 August 2020. The Tribunal noted that the deposit was not protected until 18 January 2021. The Respondent confirmed that those facts were agreed.
5. The Tribunal noted the terms of sections 3, 9 and 10 of the 2011 Regulations. The Respondent told the Tribunal that she was fully aware of the requirement to lodge the deposit in an approved scheme. She said that she was deeply sorry that this had not been done. She said that the Property had been an air bnb before it was let to the Applicant. She said that she worked for the Care Inspectorate and at the relevant time her work had involved the closure of adult care homes. She said that around this time she contracted covid. She then lost a family member and in addition, her sister became ill and required to be hospitalised. In January 2021 she realised the deposit had not been lodged. She proceeded to lodge the deposit knowing that the Applicant would be advised of the late lodging.
6. The Tribunal noted that parties were in agreement regarding the relevant facts. The Tribunal expressed the view that it had sufficient information to proceed to make a decision without the need for a further Hearing. The Parties stated that they were content for the Tribunal to make a decision on the basis of the information presented.

### **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement which commenced on 30 August 2020.
2. The Applicant paid to the Respondent a deposit of £850 on 16 August 2020.
3. The deposit was received by Safe Deposits Scotland on 18 January 2021.

4. The deposit was not paid to the administrator of an approved scheme in compliance with the timescales set out in Regulation 3 of the 2011 Regulations.
5. The deposit was paid into an approved scheme some 3 months outwith the timescales stated in the 2011 Regulations.
6. At the time of receipt of the deposit from the Applicant, the Respondent was aware of the need to lodge the deposit in an approved scheme in accordance with the 2011 Regulations.

### **Reasons for the Decision**

1. Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme administrator of an approved scheme within 30 working days of the beginning of the tenancy, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. The Tribunal was satisfied that the Respondent did not lodge the deposit in accordance with the timescales required by the 2011 Regulations. The deposit was lodged some 3 months late.
2. The amount to be awarded is a matter for the discretion of the Tribunal having regard the factual matrix of the case before it. The Tribunal considered the comments of Sheriff Ross in *Rollett v Mackie* UTS/AP/19/0020. At para 13 and 14 he considered the assessment of the level of penalty and said:

*"[13] In assessing the level of a penalty charge, the question is one of culpability, and the level of penalty requires to reflect the level of culpability. Examining the FtT's discussion of the facts, the first two features (purpose of Regulations; deprivation of protection) are present in every such case. The question is one of degree, and these two points cannot help on that question. The admission of failure tends to lessen fault: a denial would increase culpability. The diagnosis of cancer also tends to lessen culpability, as it affects intention. the finding that the breach was not intentional is therefore rational on the facts, and tends to lessen culpability.*

*[14] Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals. None of these aggravating factors is present."*

3. The Tribunal considered all of the circumstances presented to it and found it to be of significance that the deposit was unprotected for a reasonably short

period, that the Respondent had lodged the deposit without being prompted to do so and that the Respondent had admitted that there had been a breach of the 2011 Regulations. The Tribunal accepted the explanation given by the Respondent for the late lodging of the deposit. The Tribunal was of the view that there were no aggravating factors present in this case of the sort described in *Rollett v Mackie*.

4. The Tribunal found that the breach of the 2011 Regulations was at the lower end of the scale and having regard to factors put forward by both parties determined that the sanction should be £212 in the particular facts and circumstances of this case. This figure is arrived at by taking one quarter of the deposit of £850.

### **Decision**

The Tribunal granted an Order for payment of £212 in terms of Regulation 10(a) of the 2011 Regulations.

### **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.**

**Joan Devine**

J Taylor

# J Devine